Commission of Inquiry
into the Actions of Canadian Officials in Relation to Maher Arar

Policy Review

The RCMP and National Security

A Background Paper
to the Commission's
Consultation Paper

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1. Introduction to the RCMP

The Royal Canadian Mounted Police (RCMP) is Canada's national police force.[1] It is responsible for preserving the peace, preventing crime, and enforcing the law.[2] While these statements of the RCMP's mandate, drawn from the *RCMP Act*, appear to be relatively straightforward, the RCMP's policing duties are in fact a more complicated patchwork of federal, provincial and municipal law enforcement. This is principally a function of Canada's constitution,[3] its history, various federal statutes,[4] and arrangements that certain provinces, territories, municipalities and First Nations communities have made to contract policing duties out to the RCMP.

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1 *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-9 (*RCMP Act*), s. 3.

2 *RCMP Act*, s. 18(a). More specifically, section 18 of the *RCMP Act* states that it is the duty of RCMP peace officers, subject to the orders of the RCMP Commissioner:

a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;

b) to execute all warrants, and perform all duties and services in relation thereto, that may, under this Act or the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;

c) to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and

d) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner.

3 Section 92(14) of the *Constitution Act, 1867* provides that the provinces have responsibility for the "administration of justice." This has been interpreted to mean that the provinces have the power for enforcement of the criminal law (and the authority to create police forces to do so), despite the fact that the federal government has the responsibility, pursuant to section 91(27), for formulating criminal law and procedure. See for example *O'Hara v. British Columbia*, [1987] 2 S.C.R. 591; *Reference re the Adoption Act*, [1938] S.C.R. 398; *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152.

While the provincial governments have the responsibility to enforce criminal offences pursuant to section 92(14), they do not have the authority to enforce non-criminal federal offences, such as those found in the *Narcotic Control Act*, R.S.C. 1985, c. N-1, the *Income Tax Act*, R.S.C. 1985, c. 1 or *the Official Secrets Act*. For a discussion, see P. Hogg, *Constitutional Law*, 2d ed p. 425-430.

4 Eg. *Security Offences Act*, R.S.C. 1985, c. S-7 (See discussion in next paragraph).

The result is that the RCMP has inherent responsibility for the enforcement of all federal laws, except certain portions of the *Criminal Code*,[5] in all Canadian provinces and territories; and it has responsibility for enforcement of all of the *Criminal Code*, and provincial and municipal laws, in those jurisdictions that have contracted its policing services. All provinces, except Ontario and Quebec, have contracted the RCMP to provide such policing services, as have the three territories, 198 municipalities, and 192 First Nations communities.[6]

The RCMP also has primary responsibility throughout Canada for national security offences. That is, according to section 6 of the *Security Offences Act*, the RCMP has primary responsibility for the investigation and enforcement of offences arising out of conduct constituting a threat to the security of Canada.[7] Such offences are found primarily in the *Criminal Code* and the *Security of Information Act* (formerly the *Official Secrets Act*).[8]

The RCMP's many statutory and contractual duties result in a long list of functions for its members. These functions can be grouped under six broad headings:

(a) federal policing, which includes drug enforcement, economic crime, and national security investigations;

(b) contract policing, which includes its provincial, territorial and municipal policing;

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5 Despite the division of powers described at note 3, the RCMP retains the authority for enforcement of those portions of the *Criminal Code* that constitute national security offences. According to Professor Hogg: "The constitutional authority for the federal policing of offences created by the *Criminal Code* and other statutes enacted under the criminal law power is now established [cites *A.G. Alta v. Putnam* [1981] 2 S.C.R. 267], but its basis has never been clearly articulated. It probably stems from the federal Parliament's power to enforce its own laws, a power that is included in each federal head of power, and that is concurrent with provincial power over the administration of justice in the province". Federal power in regard to national security also arises from the fact that national security is a federal responsibility under the peace, order and good government power as well as the defence power. See brief discussion next paragraph, and P. Hogg, supra, p. 428-429.

6 Testimony of Deputy Commissioner Garry Loeppky in the Factual Inquiry (Loeppky testimony) at p. 701; "Organization of the RCMP", Exhibit 12, Factual Inquiry, Tab 5.

7 R.S.C. 1985, c. 21, ss. 6, 2.

8 This paper discusses the RCMP's national security enforcement mandate, as well as the organization and operation of its national security activities, in section B below.

(c) national policing, which includes its forensic laboratory services, technical operations, the Criminal Intelligence Service Canada, and the Canadian Police College;

(d) protective policing, which includes airport policing and protection of Canadian and foreign officials;

(e) international peacekeeping; and

(f) corporate services.[9]

The RCMP comprises over 22,000 members, including over 15,500 regular members, over 2500 civilian members and approximately 4000 public servants.[10] Its headquarters are in Ottawa and the Force is divided into 4 regions, 14 divisions and over 750 detachments.[11]

The head of the RCMP is Commissioner Giuliano Zaccardelli, who was appointed by the Governor in Council pursuant to the *RCMP Act*. The Commissioner has control and management of the Force, under the direction[12] of the Minister of Public Safety and Emergency Preparedness.[13] There are 7 Deputy Commissioners, 24 Assistant Commissioners, and a number of Chief Superintendents, Superintendents and Inspectors, all of whom are appointed by the Governor in Council pursuant to the *RCMP Act*.[14]

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9 "Corporate Facts", www.rcmp-grc.ca, as of July 2004. See also the RCMP's Report on Plans and Priorities 2003-2004, p. 25, available at www.rcmp-grc.ca.

10 "Organizational structure of the RCMP", www.rcmp-grc.ca, as of July, 2004. See also Loeppky testimony, p. 722.

11 "Corporate Facts", www.rcmp-grc.ca, as of July 2004.

12 The scope of direction which the Minister provides to the RCMP is the subject of much academic, jurisprudential and operational debate. This subject is addressed in the background paper entitled "Police Independence".

13 As of the time of writing this paper the Minister responsible for the RCMP is still stated in legislation to be the Solicitor General. However, on December 12, 2003, the Solicitor General was given a new title, being: Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness. Depending on the time period being referred to, she will be referred to as the Solicitor General or the Minister of Public Safety and Emergency Preparedness in this Paper. See section 5(1) of the *RCMP Act*.

14 *RCMP Act*, s. 6.

We set out the statutory background and the function and composition of the RCMP in respect of its National Security mandate in more detail below. Before doing so, it is useful to set out the historical evolution of the RCMP's national security function. For the purposes of this paper, we use the term 'national security' in a manner synonymous with the term 'threats to the security of Canada' as defined in section 2 of the *Canadian Security Intelligence Service Act*: espionage or sabotage that is against Canada or is detrimental to the interests of Canada; foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person; activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, or religious or ideological objective within Canada or a foreign state; and activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada. It is important to note, however, that this definition was not provided in legislation until the 1980s; and that – as is discussed below – the absence of a definition of national security and the absence of a clear national security mandate were important features of the Force's evolution in this area.

2. What is the RCMP's National Security Function?

A. Evolution of the RCMP's National Security Function

(i) Confederation to 1981[15]

Beginnings

The RCMP was formed in 1873.[16] In the beginning, the RCMP had a military structure, training and orientation. Until World War I, members regarded themselves as members of a military force with the additional powers of peace officers. Indeed, the RCMP sent cavalry to the Boer War, to the western front in 1918 and to Siberia in 1919. This cavalry function became entirely ceremonial over time. From the outset there was also a significant policing component to the RCMP's activities. In fact, the duties of members were always more akin to that of police officers and there was only rarely a need for the force to act in military formation.

Initially, the RCMP had little involvement in national security matters. Such matters were primarily within the authority of the Dominion Police Force, which had been created by Parliament to protect federal buildings in Ottawa, but eventually expanded to provide all national security requirements of the Canadian government. From the outset an important element of national security work was the collection of information and the development of intelligence about potential threats to Canada.[17] In this regard, the Dominion Police supervised a

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[15] The history and background set out in this subsection of the paper is based largely on the Report of the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police (the "McDonald Commission"): "Freedom and Security Under the Law" (the "McDonald Report"). The purpose of the background information herein is primarily to provide context. As such it was not considered to be an efficient use of resources to undertake extensive research in this regard. More detail on the topics canvassed in this section can be found in Part I, Chapter 2 and Part VI, Chapter 1 of the McDonald Report. It should also be noted that since the time of the McDonald report there have been a number of academic analyses of the RCMP's activities relating to national security and intelligence gathering which provide different interpretations of the evolution of the Force's national security function.

[16] Until 1920 it was known as the Royal North-West Mounted Police but will be referred to throughout this section as the RCMP.

[17] For the purposes of this paper we adopt the distinction between "information" and "intelligence" used by the RCMP. The RCMP Operations Manual provides that information is unprocessed data, which may be used in the production of intelligence. Intelligence is the end product of information that has been subject to the

network of undercover agents operating, in Canada and the United States, primarily to obtain information about Fenian activities.[18]

World War I – World War II

The need for national security intelligence increased during World War I. The Dominion Police Force grew from 12 individuals in 1868 to 140 in 1919. During World War I the RCMP also became involved in gathering national security intelligence. For example, RCMP personnel investigated allegations of pro-German sympathies among immigrants from Europe.

The RCMP absorbed the Dominion Police Force in 1920. It was noted in the McDonald Report that "one of the principal purposes of this change was to unify and strengthen the federal security intelligence capability".[19] As a result, the RCMP became the primary federal agency responsible for the collection of national security intelligence. However, prior to the 1980s there was no clear statutory authorization for this role. Neither were there statutory nor ministerial guidelines for how the role should be carried out.

Between 1920 and 1946, national security activities within the RCMP were the responsibility of the Criminal Investigation Branch (CIB). Until the mid-1930s there was little to differentiate national security investigations and intelligence gathering from the other work carried out by the CIB. The same personnel did both types of work and reported to the same superiors. It was not until 1936 that an intelligence section, tasked with the collection and analysis of national security information, was established within the CIB. Up until World War II, the number of personnel involved in such activities was extremely small. For example, the Headquarters group consisted of six individuals, some of whom were part time.

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intelligence process which involves collection, evaluation, collation, analysis reporting and dissemination. (See Exhibit 12, Factual Inquiry, Tab 32.A.)

[18] The Fenian Brotherhood was an American organization, made up primarily of Irish and Irish Americans. The primary goal of the organization was the separation of Ireland from Great Britain. In support of this goal factions of the Fenian Brotherhood favoured an invasion of Canada (or British North America as it then was). Indeed, such an invasion was attempted in 1866.

[19] McDonald Report, p. 58.

World War II brought considerable, although temporary, growth in the national security intelligence work of the RCMP. At its peak, in 1943, the Intelligence section at Headquarters had grown to three officers and 95 other personnel. In addition, specialized intelligence units were developed within certain divisional headquarters. These included Toronto (20 personnel), Montreal (19 personnel) and Vancouver (9 personnel).

From the 1930s onward, a major focus of national security intelligence work was on the communist movement. With the rise to power of Hitler and Mussolini, increasing emphasis was placed on fascist and Nazi organizations in Canada. It is important to note that, from the 1920s onward, the RCMP had a policy of restricting covert intelligence gathering operations to Canadian territory. The force relied on liaisons with British and American agencies to obtain information from outside Canada. Aside from intelligence gathering, the major national security activity of the RCMP during World War II was in relation to the registration and internment of what were referred to as "enemy aliens". It also provided advice about industrial and military sites that might be vulnerable to sabotage.

Post-War Period

After the war, the revelation of the Gouzenko spy affair[20] resulted in changes to the national security responsibilities of the RCMP. In response to the affair the government implemented a security screening system to help ensure that those individuals with access to sensitive information were trustworthy. The RCMP was made responsible for carrying out the screening process. These screening responsibilities eventually expanded to include screening for citizenship, certification of identity (travel documents for non-citizens) and immigration.

Another program with which the RCMP became involved after the war was the compilation of lists of persons to be interned in the event of an emergency. Its role was to provide information about individuals or groups to an Advisory Committee on Internment appointed by the Department of Justice, which made the decisions about what names would be included on

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[20] In 1945 Igor Gouzenko, a Soviet cypher clerk, revealed that the Soviet Union had organized an extensive espionage network in Canada. The network included Canadian civil servants and scientists who passed information important to the defence of Canada to the Soviets.

internment lists. The focus of this program was on the Communist Party or other Communist organizations.

Another significant component of the RCMP's national security mandate in the period after World War II related to foreign intelligence agencies operating in Canada and various forms of domestic subversion. In regard to the activities of foreign intelligence agencies, the RCMP had a significant role in surveillance of such groups and individuals and in taking preventative measures against them (sometimes referred to as "countering" or "counter-subversion"). This work included both keeping check on foreign diplomats suspected of carrying out secret intelligence functions in Canada and the investigation of persons suspected of being long-term deep-cover foreign agents. The RCMP assisted in a number of prosecutions under the former *Official Secrets Act*[21] and decisions by the government to declare diplomats *personae non gratae*. The *Official Secrets Act* was first enacted in 1890 and was substantially revised in 1939. Until it was amended in 2001 to include prohibitions against communications in furtherance of terrorist activities, the *Official Secrets Act* focussed on wrongful communications with, and unauthorized use of Canadian government information by, foreign powers. From World War II until 1980, there were about 20 charges under the *Official Secrets Act* and 42 diplomats were declared *personae non gratae*.

In regard to domestic subversion, the main focus in the post-war period was on organizations that were perceived to be related to communism. By the 1960s, however, there was also increasing focus on a number of new perceived threats to national security. One such threat was terrorism, which, while it had always been part of the Canadian national security landscape (for example Fenian activities), began to increase in scale in the 1960s. International terrorism came into particular focus after the tragic events of the Munich Olympics in 1972,[22] especially in view of the fact that the Olympics were to be held in Montreal in 1976. Other perceived threats included:

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21 The *Official Secrets Act* was renamed the *Security of Information Act* in 2001. (See the *Anti-terrorism Act*, S.C. 2001.)

22 During the Munich Olympics, terrorists claiming to be from Black September, a Palestinian guerrilla group, entered the Olympic Village, killed two Israelis and took nine hostages. By the time the incident ended, all the hostages, five of the captors and two West German Police Officers had been killed.

the separatist movement in Quebec; what was called the "New Left" (including anti-war, radical student and certain labour organizations); and certain aboriginal organizations.

During the post-war period the RCMP was also involved in counter-subversion or countering. Such activities were designed to disrupt groups considered to be subversive. In support of this function, the RCMP relied primarily on the collection of information from covert rather than overt sources. This included electronic surveillance, mail opening, searches without warrant, and the use of confidential personal information. It also involved the use of human sources such as informants and undercover agents.

All of the RCMP's national security activities during this period involved the collection of significant amounts of information and intelligence. The McDonald Commission observed that very little of this information was actually used for prosecutions. Instead, most of it was stored and eventually used to provide reports to others, including other police forces and various departments and agencies of government.[23]

The structure of the RCMP changed after the war as well. In 1946 the Intelligence section became a Special Branch – but still reported to the Director of the CIB. In 1950, the officer in charge of Special Branch began to report directly to the Commissioner. In 1956, the officer in charge was elevated to the directorate level and the branch became known as the Directorate of Security and Intelligence (the "I" Directorate). This structure remained essentially unaltered until 1970 when the head of the "I" Directorate was appointed a Director General – the same rank as a Deputy Commissioner, and the name of the Directorate was changed to the Security Service.

The number of RCMP personnel working on national security matters began to increase again during this period, and by the end of the 1960s had increased fifty-fold. Not all individuals involved in such work were regular members of the RCMP. Since 1951, individuals involved in national security work were divided into four categories. The largest component was regular

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[23] McDonald Report, p. 68.

members of the RCMP. In addition, there were: special constables, who were recruited to perform specialized investigative work but were not on the regular RCMP career path; public servants, who carried out support staff functions; and a number of civilian members, whose role was primarily to analyze information and write security reports.

Until the mid-1960s, Parliament played no active role in either approving or reviewing the security intelligence activities of the RCMP. While the Justice Minister was responsible for the RCMP, and the Prime Minister had ultimate responsibility, there were no established procedures whereby either was kept informed on a regular or systematic basis of the scope of the RCMP's national security intelligence activities and the methodologies employed.

The Mackenzie Commission

By the mid-1960s the Prime Minister and the Minister of Justice faced increasing questions in Parliament about the national security activities of the RCMP. In 1966, Prime Minister Pearson established the Royal Commission on Security (the Mackenzie Commission) and asked it to "make a full confidential inquiry into and report on the operations of Canadian security methods and procedures".[24]

One of the principal recommendations of the Mackenzie Commission was the creation of a security intelligence service outside the RCMP. The Commission concluded that it was inappropriate for a law enforcement body to be involved in national security intelligence work and that such work was incompatible with the role of ordinary police. Specifically, concern was expressed about the combination of a mandate to collect security intelligence with the coercive powers of a police force. The Mackenzie Commission also concluded that the Security Service within the RCMP lacked the necessary levels of sophistication and powers of analysis to perform the security intelligence function competently. It was felt that security intelligence work should be undertaken by a civilian agency, with more expertise and sophistication, as well as greater direct accountability to the government. The Mackenzie Commission also made

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[24] *Report of the Royal Commission on Security* (Mackenzie Report), Minister of Supply and Services Canada, 1981.

recommendations for legislation to regulate intrusive investigative techniques and security screenings.

At the same time that the Mackenzie Commission was established, the government created the Department of the Solicitor General. The duties of the Solicitor General's department were carved from what had previously been the responsibilities of the Justice Department, including penitentiaries, parole, the RCMP and national security activities.

Most of the major recommendations of the Mackenzie Commission were not implemented by the Trudeau government. In particular, the government rejected the complete "civilianization" of the Special Branch as well as its removal from the RCMP. Instead, the government announced a compromise: while the security service was to remain within the RCMP, it was to become "increasingly separate in structure and civilian in nature".[25]

Some civilianization did occur in the late 1960s and early 1970s. Specifically, a number of civilians were appointed successively to the position of Director General of the Security Service. Between 1969 and 1979, the civilian membership of the security service increased from 9.9% to 17.2%. The McDonald Commission noted, however, that most civilians worked at jobs considered to be in the lower ranks, and at the time of the McDonald Report no civilian was posted to a position that was the equivalent of an officer rank. During the 1970s many RCMP officers did take advantage of programs to upgrade their educational qualifications. While the composition of the Security Service remained essentially the same during this period, it did become increasingly independent from the remainder of the RCMP in matters of policy, budget and operations.

In partial response to another concern raised in the Mackenzie Report, the government enacted section 16 of the *Official Secrets Act* in 1974. That section required the RCMP to seek authorization from the Solicitor General for the interception or seizure of communications, if the Minister was satisfied that the conduct being investigated fell within a broad definition of

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[25] House of Commons, *Debates*, June 20, 1969, p. 10637.

activity inimical to national security. This represented the first attempt by the government to regulate the investigative techniques employed by the RCMP in connection with national security work.

(ii) The McDonald Commission

The most significant changes to the RCMP's national security mandate stemmed from the recommendations of the McDonald Commission, established by the federal government in 1977. These recommendations lay the foundation for Canada's approach to threats to national security up to the present time. It is worthwhile to examine the McDonald Report in some detail. It is important to note, however, that the observations and recommendations made by the McDonald Commission relate to the RCMP as it existed at the time. As is set out below the organization has undergone significant changes since then and readers should be cautious about applying the conclusions to the Force as it exists today.

The RCMP at the Time of the McDonald Commission

The structure of the Security Service at the time of the McDonald Commission is set out in the organizational chart found at Appendix "A" to this Paper.[26] As noted above, since 1970, the head of the Security Service was the Director General reporting directly to the Commissioner of the RCMP. From 1977 onward, the Director General also sat on an executive committee together with the Commissioner and three other individuals holding the Deputy Commissioner rank. Immediately under the Director General were three Deputy Director Generals – one each for administration, services and operations. Under each of the Deputy Director Generals were branches, the role of which was to provide technical services within each area. Among these were branches responsible for intelligence collection and countering or counter intelligence activities - two were devoted to counter-intelligence activities against foreign intelligence agencies and one focussed on domestic subversion. There were also three other branches with an operational role: one for security screening functions; one for the development and administration of human sources; and the third for intelligence coordination.

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[26] The information in Appendix A is taken from Appendix "V" to the McDonald Report.

In the 1970s, certain activities were moved out of the Security Service. For example, in 1972, the RCMP established the Protective Policing Directorate ("P" Directorate), which became responsible for most functions relating to protective services for government property, personnel and information from the Security Service. In 1979, the Foreign Services Directorate was established to oversee coordination of foreign liaison activities. Emergency response teams were also created, the purpose of which was to provide protection during specific emergencies such as hijackings or the kidnapping of a VIP.

Why the McDonald Commission was Established

An important impetus for establishing the McDonald Commission was concern by the public in relation to the government's and the RCMP's handling of the FLQ crisis. The crisis caused the government to be concerned about its ability to adequately handle the threat. It concluded that it required more information about the nature and scope of the separatist movement and requested the RCMP to undertake a "proactive" strategy to gather more advance information about the intentions and activities of the organizations involved in the movement. The RCMP was also requested to "prevent" or "counter" disruptive acts. In response, the RCMP embarked on what the McDonald Commission characterized as a campaign of intelligence gathering, infiltration, harassment and disruption directed at many forms of nationalist sentiment in Quebec. This campaign included activities which were clearly not authorized by law, including (among the more notorious) burning down a barn to prevent a meeting of what were perceived to be militant nationalists and American radicals; a break-in at a Montreal news agency perceived to be "left-wing", including theft and destruction of files; and a break-in and theft of membership lists of the Parti Québécois. Such extensively criticized activities on the part of the RCMP were not restricted to Quebec or the FLQ crisis. Examples of what became known as "dirty tricks", aimed in particular at 'left-wing' or radical groups, occurred throughout Canada.[27]

Another impetus for establishing the McDonald Commission was an increasing expression of concern, both in Parliament and by the public, over the lack of a clear government mandate for the activities of the Security Service. This concern was expressed by the Mackenzie

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[27] For more see McDonald Report, p. 7 onward.

Commission, but, as described above, had been largely ignored by the government. Expressions of concern increased after the FLQ crisis.

In March 1975, Cabinet approved guidelines for Security Service activities in an attempt to address the concern about the absence of a clear mandate. These guidelines provided as follows:

> (a) The RCMP Security Service be authorized to maintain internal security by discerning, monitoring, investigating, deterring, preventing and countering individuals and groups in Canada when there are reasonable and probable grounds to believe that they may be engaging in or may be planning to engage in:
>
> (i) espionage or sabotage;
>
> (ii) foreign intelligence activities directed toward gathering intelligence information relating to Canada;
>
> (iii) activities directed toward accomplishing governmental change within Canada or elsewhere by force or violence or any criminal means;
>
> (iv) activities by a foreign power directed toward actual or potential attack or other hostile acts against Canada;
>
> (v) activities of a foreign or domestic group directed toward the commission of terrorist acts in or against Canada; or
>
> (vi) the use or the encouragement of the use of force, violence or any other criminal means, or the creation or exploitation of civil disorder; for the purpose of accomplishing any of the activities referred to above;
>
> (b) The RCMP Security Service be required to report on its activities on an annual basis to the Cabinet Committee on Security and Intelligence;
>
> (c) The Solicitor General prepare for consideration by the Prime Minister a public statement concerning the role of the RCMP Security Service.

The guidelines were criticized as being both too broad and too vague. In addition, they were silent with respect to methods of investigation or of countering which could be employed by the Security Service.

The McDonald Commission Report

By the time the McDonald Commission was established, there was therefore considerable public concern about the operation of the Security Service in Canada. This concern was validated by the Commission, which catalogued a long list of substandard, inappropriate and illegal activity as

well as numerous infractions on civil liberties as a result of the Services surreptitious investigative methods. It found that almost all of these illegalities and improprieties were undertaken without the knowledge of the political officials charged with overseeing the RCMP.

The McDonald Commission concluded that the Security Service lacked a precise mandate, effective political control or adequate review of its activities. It was critical of the combination of law enforcement and security intelligence collection into one agency. It was also critical of the Security Service itself. The Service was seen as lacking sophistication and analytical ability. For example, it was observed that there was an inability to distinguish subversion from dissent and that there was a concomitant anti-"left-wing" bias.

The McDonald Commission made a number of significant recommendations for a reformulated security intelligence agency. These recommendations focused on setting out a clear mandate for the Security Service; establishing clear guidelines for the operational activities of the Service; implementing management, recruiting and other personnel policies appropriate to a security intelligence agency; and developing suitable structures and procedures to ensure that the entity responsible for security intelligence be under the direction and control of government, including both parliamentary and non-parliamentary review and oversight mechanisms.[28]

The over-arching and likely most significant recommendation made was the removal of the Security Service from the RCMP. The Commissioners were strongly of the view that the nature of the changes they had recommended required a security intelligence agency outside the RCMP. Reasons advanced by the McDonald Commission for this recommendation included:

> *Appropriate Management and Personnel Policies*: It was felt that the management structure of the RCMP was inimical to the structure proposed for an improved security intelligence agency. Specifically the Commission recommended recruitment of more mature, more experienced, better educated personalities; a new approach to career paths; a more participatory, less authoritarian style of management; and substantially different training and development approaches. This was contrary to the authoritarian,

[28] McDonald Report, p. 754.

military-style approach and structure which was seen to be entrenched in the RCMP. While it was possible to have two very different management structures in the same organization, it was felt that the likelihood for conflict to the detriment of the much smaller Security Service was too great.[29]

Direction and Control by Government: One of the central aims of the reforms recommended by the McDonald Commission was to improve the direction and control exercised over the security intelligence function by other parts of government including Parliament, the minister responsible, other members of Cabinet, and other senior officials in various departments and agencies. It was felt that effective oversight could best be achieved by placing the security intelligence function in a separate agency for two reasons. First, while a number of similarities were identified for the two agencies, including the requirement for ministerial guidance in regard to policy issues, allocation of resources and liaison arrangements, the Report identified one fundamental difference. This difference relates to the degree to which the minister and other senior governmental officials should be involved in decisions regarding what groups and individuals to investigate and how such investigations should proceed. For a security intelligence agency, it was concluded that the minister should be actively involved because such decisions can have ramifications for Canada's system of government and its relations with other countries. In the case of a police force, involvement by the minister and senior officials "in decisions about whom to investigate and how these investigations should be conducted should be under an advisory basis only and limited to matters with significant policy implications".[30] This difference would, according to the McDonald Commission, lead to unnecessary complications from a direction and control perspective, if both policing and security intelligence existed in one entity.

The second oversight related reason given was: "The traditional, and we believe unhealthy, semi-independent relationship which the RCMP has enjoyed with government

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29 McDonald Report, p. 755.

30 McDonald Report, p. 757. See also the background paper entitled "Police Independence".

will not easily be changed."[31] The McDonald Commission felt that, even in regard to policing functions, the RCMP needed to be more accountable to government, especially on broader policy issues and general approaches. It was felt that, at that time, there was great resistance to increased accountability within the force. This culture would impede the development of greater accountability on the security intelligence side.

Trust in the RCMP: The McDonald Commission was of the view that the questionable activities which they had investigated, involving actions of both the Security Service and the criminal investigation side of the force, "have diminished significantly the trust that Canadians and their governments have in the RCMP".[32] While the Report acknowledged that the Commissioner of the RCMP and many others in the force were working very hard to restore trust, it was felt that it would be some time before this goal was accomplished.

Checks and Balances Could Develop Between the RCMP and the Security Service: Finally, by making one organization responsible for the collection of security intelligence and the other responsible for its enforcement, it was hoped that a system of checks and balances would develop between the RCMP and the security intelligence agency. In this regard, it is important to note that the McDonald Commission also recommended that the security intelligence agency not have powers of arrest, search and seizure and that a peace officer accompany security agents on surreptitious entries under judicial warrants. It was felt that this division of responsibilities would create an interdependency between the agencies, which, in turn, would provide opportunity for the two organizations to monitor each other. It was also felt that having two agencies would provide the minister with two separate systems to assess against each other.[33]

The McDonald Commission was also strongly of the view that the power to collect security intelligence should not be contained in the same organization as the coercive power of a police

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[31] McDonald Report, p. 756.

[32] McDonald Report, p. 758.

[33] McDonald Report, p. 759.

force. This concern had previously been raised by the Mackenzie Commission. As stated by the McDonald Commission, in support of its recommendation that the security intelligence agency should not be authorized to enforce security measures:

> First, as we argued in Part III, we think it is unacceptable in Canada that the State should use a secret intelligence agency to inflict harm on Canadian citizens directly. This position, must be noted, does not prevent a police force or a government department from using intelligence supplied by the security intelligence agency to enforce law or security measure against an individual. Second, we think the liberty of Canadians would be best protected if measures to ensure security were not enforced by the organization with the prime responsibility for collecting information about threats to that security. The assignment of executive enforcement responsibilities to agencies other than the security intelligence organization assures desirable countervailing powers and avoids the danger that the security intelligence organization might be both judge and executor, in the same matter.[34]

Finally, for the purposes of this paper, the McDonald Commission made a number of recommendations for review and oversight. As set out in the Report:

> In our system of cabinet and parliamentary government under the rule of law, 'control' of government activity by individuals or institutions not accountable to Ministers primarily takes two forms: (1) the supremacy of laws enacted by a representative legislature and (2) review of governmental activities to ensure that it is effective and that it meets the requirements of the law and acceptable standards of propriety. The function of bodies which are independent of the executive, such as Parliament, the judiciary and oversight bodies, is not to carry out, nor to direct the carrying out, of national security functions, but rather to provide some assurance that national security responsibilities are performed properly and effectively within an established legislative framework.[35]

The Report includes recommendations related to three forms of what were termed "external controls" for the proposed security intelligence agency. The first was judicial oversight. It was recommended that the Federal Court should have a role in the release of confidential information and in authorizing the use of intrusive methods of surveillance such as electronic surveillance, mail interception and surreptitious entry.[36] The Commission also recommended the creation of a

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[34] McDonald Report, p. 613.

[35] McDonald Report, p. 881.

[36] McDonald Report, p. 882.

Security Appeals Tribunal associated with the Federal Court and specifically tasked with hearing security screening appeals.[37]

The second form of external control recommended was an Advisory Council on Security and Intelligence, which was to be an independent arm's length review body. It was felt that such a body was necessary because of the extreme secrecy of many national security intelligence operations and the potential impact on the civil liberties of individuals who are the subject of national security investigations. As noted in the Report:

> With normal operations of government the citizen knows what the government has done to him, and can decide whether he wishes to question the propriety or legality of government action. However, with regard to security intelligence investigations which a citizen may fear are encroaching on his privacy or his political liberty, he has no way of knowing whether he has been investigated as a threat to security and, if he has, whether the investigation has been carried out in a legal and proper manner.[38]

The basic function of the Advisory Council was to carry out "a continuous review of security intelligence activities to ensure that they are lawful, morally acceptable and within the statutory mandate established by Parliament."[39] The Advisory Council was to report regularly to the Solicitor General and from time to time to a Parliamentary Committee (see next recommendation). The subjects of review were to include: the interpretation of the security intelligence agency's statutory mandate; the implementation of administrative directives and guidelines; the operation of a system of controlling intrusive intelligence collection techniques; and relationships with other agencies.[40] The McDonald Commission also recommended that the reviews conducted by the Advisory Council be *ex post facto*, partially to ensure independence. Specifically it was noted that if the Advisory Council were to pre-approve actions, they themselves would be implicated in the actions. The Advisory Council's jurisdiction was to

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37 McDonald Report, p. 883.

38 McDonald Report, p. 884.

39 McDonald Report, p. 884.

40 McDonald Report, p. 888.

extend to all organizations employed by the federal government to collect intelligence through clandestine means, other than the RCMP.[41]

Third, the McDonald Commission recommended the establishment of a Parliamentary Committee for the purpose of overseeing the security intelligence agency. The prime function of the Parliamentary Committee would be "to scrutinize the activities of a security intelligence organization with a view to ensuring that it fulfills the intentions of Parliament as set out in the organization's legislative charter".[42] Unlike the Advisory Council, the Parliamentary Committee was to be as much concerned "with the effectiveness of the security intelligence organization as with the legality or propriety of its operations".[43] It was recommended that the Parliamentary Committee should be relatively small (no more than 10 members), include members from all major political parties, and that efforts should be made to maintain continuity of membership for a reasonable period of time. It was also recommended that all sessions of the Parliamentary Committee should be held *in camera.*

Recommendations were also made with respect to a review mechanism for the RCMP, once the security intelligence function had been removed. In this regard, the Commission recommended that a complaints commissioner, which they called the Office of Inspector of Police Practices, be established.[44] This Office was to have two functions: the power, "in exceptional circumstances", to investigate complaints of RCMP wrong doing and make recommendations to the Solicitor General; and the right to monitor the investigations of alleged misconduct undertaken by the RCMP itself and to evaluate the RCMP's complaints-handling procedure. The Office of Inspector was to report directly to the Solicitor General.[45]

It should be clarified that the McDonald Commission did not recommend the removal of the RCMP from national security work entirely. Instead, the Report envisioned a system where

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41 McDonald Report, p. 885.

42 McDonald Report, p. 888.

43 McDonald Report, p. 888.

44 McDonald Report, p. 985.

45 See also the background paper entitled "Domestic Models of Review of Police Forces".

primary responsibility for intelligence gathering would rest with the proposed security intelligence agency, but that the agency would be assisted by the RCMP (in such matters as executing warrants) and that the RCMP would retain responsibility for preventing crime and investigating and arresting criminals in the national security field. There was no discussion in the McDonald Report about a intelligence gathering role for the RCMP, arising out of its crime prevention and criminal apprehension role.

(iii) The Government Response to the McDonald Commission[46]

In contrast to the government's response to the report of the Mackenzie Commission, many of the recommendations of the McDonald Commission were implemented. In 1985, Parliament passed the *Canadian Security Intelligence Service Act*, R.S.C. 1985 c. C-23, (*CSIS Act*) creating the Canadian Security Intelligence Service (CSIS). A detailed review of the *CSIS Act* is set out in *The Legislative and Organizational Framework for the National Security Environment in Canada*, which is Exhibit 2 in the Factual Inquiry. The *CSIS Act* embodied many of the McDonald Commission's recommendations. It created a separate security intelligence agency with a precise statutory mandate and statutory limits on its powers. It also provided for several forms of review and oversight in respect of the new agency.

CSIS is empowered by the *CSIS Act* to collect, to the extent that it is strictly necessary, analyze and retain information and intelligence on activities that may be reasonably suspected of constituting threats to the security of Canada; report to and advise the government in relation to such threats; and provide security assessments to government departments. Threats to the security of Canada are defined in section 2 of the *CSIS Act* as:

- espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

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[46] The information set out in the remainder of this paper comes from a number of different sources identified in the footnotes where this is practical. An important source of information for this paper was a series of interviews which the Commission conducted with the RCMP and other domestic organizations and agencies involved in national security work. We have not provided citations for specific conversations. However, we occasionally use phrases like "we have been informed" to indicate information obtained from such interviews.

- foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, or religious or ideological objective within Canada or a foreign state,[47] and
- activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

This definition is subject to an explicit statutory exclusion of "lawful advocacy, protest or dissent, unless carried on in conjunction with defined threats as described above". CSIS is empowered to use a wide range of investigative techniques and can be authorized to "intercept any communication or obtain any information, record, document or thing" it needs to investigate a threat to Canada's security or to perform its duties and functions.[48] Permission to proceed with intrusive measures is provided by the courts through warrant applications.[49] An application for a warrant or a renewal of a warrant is heard in private.[50]

The *CSIS Act* also outlines a role for an Inspector General to monitor CSIS' compliance with its operational policies, review CSIS operational activities and certify his/her degree of satisfaction with the CSIS Director's annual report to the Solicitor General.[51] In addition, the *CSIS Act* establishes the Security Intelligence Review Committee (SIRC), an external, independent statutory review body, which reviews the performance of CSIS.[52] SIRC's powers are consistent

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47 The words "religious or ideological" were added to the *CSIS Act* by s. 89 of the *Anti-terrorism Act*, S.C. c.41.

48 *CSIS Act*, s. 21(3).

49 *CSIS Act*, s. 21-28.

50 *CSIS Act*, s. 27.

51 Now the Minister of Public Safety and Emergency Preparedness.

52 *CSIS Act*, s. 34.

with those recommended in the McDonald Commission Report for the Advisory Council on Security and Intelligence.[53] Its jurisdiction does not, however, extend to agencies other than CSIS.

In 1984, the same year as the *CSIS Act* was enacted, the government also enacted the *Security Offences Act*. The *Security Offences Act* was the first piece of legislation to explicitly set out the RCMP's role with respect to national security. Section 6 of the Act provides that RCMP officers "have the primary responsibility to perform the duties that are assigned to police officers" in relation to offences that arise "out of conduct constituting a threat to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*",[54] or if "the victim of the alleged offence is an Internationally Protected Person within the meaning of section 2 of the *Criminal Code*". The duties of the RCMP include "the apprehension of the commission" of national security offences which, as discussed in more detail below, are generally contained in the *Criminal Code* and the *Official Secrets Act*.[55]

The *Security Offences Act* therefore clarified that, even with the advent of a civilian security intelligence agency, the RCMP would still have significant duties in relation to criminal investigations and the prevention of crime that affected national security. It also established the RCMP, as opposed to municipal or provincial police services, as having primary responsibility in relation to such criminal offences. The federal role was further emphasized by authorizing the Attorney General of Canada, (as opposed to provincial Attorneys General) to prosecute criminal offences in the national security context.

Even before the addition of new offences relating to terrorism and terrorist groups contained in post 9/11 legislation, the list of offences that could fall under the "primary responsibility of the

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53 See further discussion in the background paper entitled "Domestic Models of Review and Oversight of Security Intelligence Agencies".

54 The definition of "threats to the security of Canada" set out in the *CSIS Act* is adopted for the purpose of this section.

55 Now the *Security of Information Act*.

RCMP" pursuant to the *Security Offences Act* was substantial.[56] The scope of primary responsibility was further broadened by the inclusion of offences where the victim is an "Internationally Protected Person" defined in section 2 of the *Criminal Code* as a foreign head of state, minister of foreign affairs and other representatives of states and international organizations of an inter-governmental character, including family members that accompany such persons on foreign trips.[57]

(iv) The RCMP in the Period between the Establishment of CSIS and 9/11

The RCMP continued to evolve and adapt to changes after the creation of CSIS and the removal of responsibility for national security intelligence-gathering. Three elements of this evolution warrant further scrutiny because they provide important context for the RCMP's national security mandate as it exists today. These elements are: the emergence of intelligence-led policing; the organization of the RCMP's national security mandate; and the RCMP's relationship with CSIS.

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[56] In a reference to the four-pronged definition of "threats to the security of Canada" set out in section 2 of the *CSIS Act*, sabotage is prohibited under section 52 of the *Criminal Code* and includes damage or destruction of property in impeding the working of things for a purpose prejudicial to the safety, security or defence of Canada or of the armed forces of any other state that is lawfully present in Canada. Espionage was covered under section 3 of the *Official Secrets Act* which provided a broadly worded offence that applied when a person for any purpose prejudicial to the safety or interests of the state approaches any prohibited place, makes any note that is intended to be directly or indirectly useful to a foreign power or obtains, records or communicates any information useful to a foreign power. Other offences set out in the *Official Secrets Act* related to wrongful communications and harbouring spies. "Foreign influenced activities" would not in themselves be an offence, but could if they involved uttering threats under section 264.1 of the *Criminal Code* or intimidation under section 423. The threat of serious violence against persons or properties could include a wide range of *Criminal Code* offences relating to air or maritime safety, explosives, kidnapping, murder, mischief and arson. In this regard it is important to note that the *Criminal Code* including prohibitions not only against completed offences such as murder and kidnapping but also for attempts to commit such crimes, conspiracies or agreements to commit such crimes including some conspiracies involving people and crimes outside of Canada. Offences relating to "undermining by covert unlawful acts intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada" could include offences such as treason and seditious speech or conspiracy as prohibited by sections 46 and 61 of the *Criminal Code* respectively. Offences involving sedition are notoriously vague, but were restricted by the Supreme Court of Canada's famous decision in *R. v. Brucher*, [1951] S.C.R. 265 at 301.

[57] For example, Section 431 of the *Criminal Code* makes it an offence to attack the official premises, private accommodations or means of transport of an internationally protected person; section 424 makes it an offence to threaten such an attack and section 7 makes it an offence to conduct certain attacks outside Canada. In addition, the RCMP would have primary responsibility with respect to other criminal offences such as killings and kidnappings directed against internationally protected persons in Canada, as well as attempts, conspiracies, counseling and assisting in such crimes.

Intelligence-led Policing

The late 1980s and early 1990s saw the development of a new approach to policing at the RCMP – one which shall be referred to herein as intelligence-led policing. While intelligence-led policing is a somewhat ephemeral concept, the basic concept is relatively straightforward. As is set out on the RCMP website:

> Most would agree, however, that at its most fundamental, intelligence-led policing involves the collection and analysis of information to produce an intelligence end-product designed to inform police decision-making at both the tactical and strategic levels. It is a model of policing in which intelligence serves as a guide to operations, rather than the reverse. It is innovative and, by some standards, even radical but it is predicated on the notion that a principle task of the police is to prevent and detect crime rather than simply to react to it.[58]

The formal adoption of an intelligence-led policing approach evolved from a program established by the RCMP in the late 1980s, known as "Community Policing". Community Policing focused on developing better relations with the communities which the Force served and engaging such communities in problem-solving. It involved a general change in approach and a change in the training of frontline police officers including an increased focus on working in the community, acquiring information about what the community's needs are; and emphasis on problem-solving in order to prevent crime rather than strictly reacting to it after it occurs.[59] This new approach led to the need for better and more reliable information, and ultimately to intelligence-led policing. It has developed into a RCMP-wide approach not restricted to any particular type of criminal activity.

Soon after embarking on the Community Policing approach, it became evident that in order for it to work effectively, the RCMP required an accessible bank of information on which to base its problem-solving and crime prevention activities. Events such as the Oka crisis in the summer of 1990, emphasized the need for better information and intelligence as there was a perception that

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[58] *Intelligence-Led Policing: A Definition*, RCMP website, Exhibit 12, Factual Inquiry, Tab 16.

[59] Loepkky Testimony, pp. 742-3, 747-9.

this event had taken the Force by surprise.[60] As stated in the 1991 RCMP Implementation Guide:

> Up to this time, the failure to develop a sophisticated strategic as well as tactical intelligence capability within the RCMP has seriously hindered the Force's ability to accurately measure and prevent crime having an organized, serious or national security dimension in Canada, or internationally as it affects Canada. This, in turn, has prevented the development of a more effective crime control strategy that would have a measurable impact on reducing the serious effects of crime on Canadian society.[61]

In the national security context the adoption of intelligence-led policing resulted in the RCMP engaging in activities that are very similar to those engaged in by CSIS, albeit for different ultimate purposes. As noted in the government's "On Course" report in 1991:

> Both employ similar investigative methods and techniques to acquire information on the activities of individuals and groups, the RCMP to enable the force to prevent crime or to lay charges, CSIS in order to advise the government with respect to threats.[62]

The different ultimate purpose for which intelligence is collected has resulted in the use of the term "criminal intelligence" as distinct from the "security intelligence" that CSIS collects.[63] Criminal intelligence is characterized as intelligence having a link to criminal activity, gathered in support of investigations, with the goal of preventing or deterring a criminal act. Security intelligence, on the other hand, refers to information relating to threats to the security of Canada that is collected for the purpose of advising the government.[64] It seems clear, however, that, in the national security context, the very same information can be both criminal intelligence and

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60 Loeppky Testimony, p. 747.

61 *Criminal Intelligence Program Implementation Guide*, Exhibit 12, Factual Inquiry, Tab 42, p 1.

62 "On Course", Exhibit 12, Factual Inquiry, Tab 20, p. 48.

63 The two types of intelligence have also been referred to by the courts (see for example the decision of the Supreme Court of Canada in *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, at 744) and in legislation (see for example, *The Charities Registration (Security Information) Act 2001, c. 41* and the *Immigration and Refugee Protection Act, 2001, c. 27*.

64 We note that the Department of National Defence refers to the intelligence which it collects as "military intelligence". This term similarly relates to the mandate of that department.

security intelligence. It is also clear that both forms of intelligence are gathered and analysed in the same way.[65]

In addition, while "criminal intelligence" is collected for the purpose of furthering the RCMP's criminal mandate, the RCMP recognizes a difference between intelligence gathering and traditional investigative work. In its Criminal Intelligence Program Guide, the RCMP states: "The development of intelligence should not be confused with traditional investigative work. Although the two are related, they are only cousins in the police and law enforcement system. Investigative reporting is evidentiary in nature. Intelligence reporting is like an early warning system – what are the capabilities, vulnerabilities, limitations and intentions of criminal organizations or individual criminals?"[66] As such, it appears that the collection of "criminal intelligence" is not exclusively in direct support of the prosecution of criminals. It has an additional role of providing a better understanding of the organization and individuals that have a potential to engage in crime.

As noted above, intelligence-led policing is closely tied to a greater emphasis on crime prevention than was traditionally the case. While investigating crimes and apprehending criminals remains an important part of the RCMP's work, the new approach places much greater emphasis on preventing crimes, disabling potential criminals and making communities safer. This requires the RCMP to be more proactive rather than simply reactive to crimes that have already been committed. As is implicit from the quote in the previous paragraph, this further emphasizes the fact that information and intelligence are not gathered solely to support the prosecution of criminals.

It is important to note that intelligence-led policing was not developed specifically in the national security context. It applies generally to the RCMP's mandate. Indeed, prior to the events of 9/11

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[65] See Loeppky Testimony, pp. 784-5, 1289-90.

[66] See *Criminal Intelligence Program Guide*, Exhibit 12, Tab 44, p. 19.

the core of the RCMP's intelligence activities appear to have been more clearly linked to its mandate regarding organized crime.[67]

Questions: Does intelligence-led policing, combined with emphasis on crime prevention fundamentally change the nature of police duties? Has it blurred the distinction between policing and intelligence gathering identified by the McDonald Commission? Do these changes have an effect on the level of independence which the police should have from government in the national security context? Is the distinction between criminal intelligence and security intelligence relevant to the observations made by the McDonald Commission in respect of the need for greater accountability to the government? What are the implications of intelligence-led policing for civil liberties and accountability?

The Organization of the RCMP's National Security Activities After CSIS

After the creation of CSIS, the RCMP undertook a number of organizational changes in regard to its national security mandate. In 1988, the RCMP established a National Security Investigation Directorate (NSID) and a National Security Operations Branch (NSOB) at Headquarters to provide expertise and dedicated resources for the investigation of offences having a national security dimension, and to supply investigative and related support for its protective policing program (including government officials and Internationally Protected Persons).

To facilitate the new intelligence-led policing approach, a Criminal Intelligence Directorate (CID) was created in 1991. The mission statement of the CID provides:

> The mission of the Criminal Intelligence Directorate is to provide a national program for the management of criminal information and intelligence which will permit the RCMP to detect and prevent crime having an organized, serious or national security dimension in Canada or internationally as it affects Canada.[68]

The establishment of the CID also involved a reorganization of the national security function. The CID included a national security branch, the role of which was the coordination of

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[67] Loeppky Testimony, p. 748.

[68] *Criminal Intelligence Program Implementation Guide*, Exhibit 12, Factual Inquiry, Tab 42, p. 13.

investigations involving national security offences. All Headquarters departments involved directly in the RCMP's national security mandate were located within the CID.

In addition to the CID at Headquarters, there were also criminal intelligence sections in the Divisions. Their role was to bring together various pieces of information in the provinces and to provide those to Headquarters. National Security Investigation Sections (NSIS) that were charged with the operational aspects of national security investigations had been created in the Divisions in 1988. From the outset, NSIS also had a very centralized reporting function.[69]

An important component of the CID's creation in 1991 was the establishment of a Secure Criminal Information System (SCIS).[70] SCIS, which is described in greater detail below, is a centralized database used exclusively for national security information and intelligence. Because of its connection to national security, all such information is classified by the RCMP and access to SCIS is restricted to personnel with the appropriate security clearance who 'need to know' the information to perform their functions.

During this period, threats to the security of Canada related less frequently to matters associated with the Cold War and increasingly to terrorism. There was increased focus by the RCMP on extremists within the Muslim community because they were perceived to be a principal source of terrorist activity. Notable national security matters engaged in by the RCMP between the McDonald Commission and 9/11 included the investigation of the Air India tragedy. During this time personnel involved in national security made up a relatively small part of the Force and at the time of 9/11 the Security Offences Branch was staffed by 21 individuals.[71]

Interaction with CSIS

In the 1980s and 1990s the RCMP developed a relationship with CSIS. In July 1984, a Ministerial Directive was issued describing the expected relationship between the RCMP and

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[69] Of the 14 NSIS, four were converted to INSETs after 9/11.

[70] See further discussion below.

[71] Loeppky Testimony, p. 750. In total the RCMP had 156 personnel devoted to its national security activities immediately prior to 9/11.

CSIS. This was followed in August 1986 by a further Directive that established the RCMP/CSIS liaison officer program, to facilitate communication and coordination between the two organizations. This program involved the appointment of personnel within each organization to serve as point persons for information and consultation. In 1986, the Minister also approved a Memorandum of Understanding (MOU) between the RCMP and CSIS dealing with cooperation between the two organizations, including the exchange of information as it relates to law enforcement.[72] The MOU, which was amended in 1991, continues, together with relevant legislative provisions, to govern the relationship between the RCMP and CSIS.

The MOU sets out the following guiding principles:

- The RCMP will rely on CSIS for intelligence relevant to national security offences.
- CSIS will provide to the RCMP intelligence relevant to the RCMP's security enforcement and protective security responsibilities.[73]
- The RCMP will provide to CSIS information relevant to the CSIS mandate.
- The RCMP will be the primary recipient of security intelligence on national security offences.
- The RCMP and CSIS will consult each other with respect to the conduct of security investigations.
- The RCMP and CSIS will conduct security investigations in accordance with guidelines, standards and directions provided by the Solicitor General.

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72 Exhibit 12, Factual Inquiry, Tab 49.

73 As noted above, these responsibilities were defined as the prevention, detection, investigation and laying of charges in relation to any offence referred to in section 2 of the *Security Offences Act* or the apprehension of the commission of such an offence included in the *Criminal Code*, *Official Secrets Act*, *Export and Import Permits Act* or any other federal statute having a national security dimension; the protective security measures to safeguard VIPs, federal properties, airports and vital points from security offences or threats; the provision of advice to departments and agencies of government respecting protective security measures; and the consolidation of threat assessments from CSIS and other sources to provide appropriate protection to VIPs and for special events.

Part I of the MOU deals with the exchange of information and intelligence and in particular the types of information that will be exchanged. Part II deals with the provision of operational support and assistance. It deals specifically with support that will be provided in connection with special events, security assessments, air services, protective security, photographic services, foreign liaison and incident management. On some occasions, when CSIS is unable to do so itself, the RCMP provides investigative assistance, such as providing surveillance.[74]

Part III of the MOU sets out certain principles and mechanisms to facilitate cooperation in relation to the exchange of information. Specifically, four principles are set out:

(a) All information, documentation or material provided under [the] MOU shall be fully protected and any caveats imposed by either parties shall be fully respected to the extent provided by law.

(b) National security investigative files shall be maintained separately from other investigative records and access to these files shall be strictly governed by the "need to know" principle.

(c) Subject only to the requirements of the courts, information provided by either party to [the] MOU shall not be used for the purposes of obtaining search warrants or authorizations to intercept private communications produced as evidence in court proceedings or disclosed to Crown prosecutors or any third-party without the prior express approval of the party that provided the information.

(d) The MOU shall not be interpreted as compelling either party to disclose the identity of its sources or caveated information from a third party.

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[74] Loeppky Testimony, p. 1141. Deputy Commissioner Loeppky testified that such assistance would be provided if CSIS was "absolutely strapped".

These principles reflect the secrecy attributed to national security intelligence. They also reflect the fact that it is necessary to protect the identity of sources and to respect the conditions imposed on the sharing of information supplied by foreign agencies in order to ensure the continued flow of such information. They also suggest that much security intelligence (at least what is provided by CSIS) will never be used as evidence in court.

The CSIS/RCMP MOU provides for a liaison officer program and a liaison committee. We are informed that the liaison officer program has been replaced by an officer exchange program whereby personnel from each entity are seconded. These liaison and exchange programs are intended to foster cooperation with respect to the identification and exchange of information and intelligence; the provision of operational assistance; investigation of targets of mutual interests; and the establishment of combined operations.

B. 9/11 to the Present

The remainder of this paper focuses on the present structure and activities of the RCMP in connection with its national security mandate. As noted above, the RCMP was left with a significant national security mandate after the creation of CSIS, and with the advent of intelligence-led policing, it currently maintains a significant national security related information and intelligence function. Both the significance and volume of such work increased after 9/11 and the government's response to that event. Currently RCMP personnel are involved in a broad range of activities in support of its national security mandate. We are informed by the RCMP that these include: collection, maintenance and analysis of national security related information and intelligence; sharing such information and intelligence with other agencies, both domestic and foreign; preparation of analyses, threat assessments and other methods of support for internal and external purposes; investigations of crimes related to national security; investigations and countering activities to prevent the commission of national security crimes; and the protection of specific national security targets.

The remainder of this section is divided into five topics: (1) Statutory and Policy Framework; (2) Organization of the RCMP's National Security Activities; (3) Information and Intelligence

Management, Retention and Sharing; (4) Interaction with Other Agencies; and (5) Internal Accountability Mechanisms.

Before turning to these topics, it is useful as a matter of background and context to identify an important feature of the national security activities of the RCMP: a significant portion of this work is unlikely to be seen by anyone outside the policing or national security intelligence community. This feature has important implications for the question of a need for a review mechanism and the form which any such mechanism should take.

The courts serve an extremely important third party accountability function for police agencies. This role arises primarily out of the criminal trial process. In the course of a trial, the activities of a police force in investigating and apprehending an individual will be subject to the scrutiny of the courts. However, in regard to crimes related to national security, there is a risk that the opportunity for such judicial scrutiny will not often occur.

In this regard, it is important to note that, while it is open to the RCMP to charge individuals under the broad range of national security offences that now exist, charges and prosecutions are not the inevitable outcome of the RCMP's national security activities. As stated by Deputy Commissioner Loeppky in his testimony in the Factual Inquiry:

> I think that our primary role in society is to preserve the peace and to prevent crime before it begins. It is only as a last resort that we end up doing a criminal investigation and moving ultimately to prosecution.[75]

To date there have been very few prosecutions of national security offences. In addition to the increased focus on crime prevention, we are informed by the RCMP that a deliberate decision is sometimes made not to prosecute. Factors which are considered in making such decisions include: the inherent secrecy of national security activities; the need to protect sources of information and respect conditions or caveats placed on information provided by other agencies; and the desirability of achieving goals other than the conviction of a criminal, such as disrupting a criminal organization or the eventual conviction of a more senior member of a criminal

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[75] Loeppky Testimony, p. 733.

organization. As a result, a significant portion of the RCMP's national security investigations do not make it to the criminal trial stage where the RCMP's work and conduct would be subject to scrutiny by the courts.

Further, even in investigations which result in charges and a trial, a significant amount of the national security information and intelligence gathered is not gathered directly to support prosecutions. As noted above intelligence reporting has been described by the RCMP as akin to an "early warning system" designed to inform the Force of the capabilities, vulnerabilities, limitations and intentions of organizations and individuals. Even with the disclosure requirements set out by the Supreme Court of Canada in the *Stinchcombe* case, it is likely that portions of the information gathered by the RCMP will not be disclosed, because such information may not be relevant to the specific offence being prosecuted. The RCMP notes that because national security investigations are criminal investigations, the possibility of judicial scrutiny always exists and the presence of this possibility acts as an indirect accountability mechanism. However, even accepting this assertion, a significant amount of information and intelligence gathered is not ever subjected to actual judicial scrutiny.

Moreover, there is a significant likelihood that an individual who has been subject to investigation, such as surveillance, or about whom information has been gathered will not know that such action has taken place. In these circumstances, the individual is obviously unable to raise objections if he/she believes that the manner in which the information was obtained or the use which is made of that information offends the individual's rights.

It is also important to note that much of the information gathered by the RCMP in connection with its national security mandate will be "classified". Thus, access to such information is restricted even within the RCMP. While protection of such information, including source information, is done for valid reasons, the result is a further layer of impenetrability surrounding the exercise by the RCMP of its national security mandate.

These features are not raised as criticisms of the RCMP's work but to point out the fact that while the possibility of outside review exits, many of the RCMP's national security activities will not

be made known to or reviewed by any party other than another police force or intelligence agency.

(i) Current Statutory and Policy Framework

In this subsection we review: the *RCMP Act*; relevant national security legislation; the RCMP's relationship with the Solicitor General including the relevant Ministerial Directives that have been issued; and RCMP internal policies.

(a) The *RCMP Act*

The *RCMP Act* establishes and authorizes the RCMP to be Canada's national police force. Section 4 of the Act provides that the RCMP may be deployed both within and outside Canada.

The Commissioner of the RCMP is empowered to control and manage the RCMP under the direction of the Solicitor General. The force is also made up of officers and other members and supervisors and special constables, as well as civilian staff.

Every officer and every other person designated as a peace officer under s. 7(1) of the *RCMP Act* is a peace officer in every part of Canada and has the power, authority, protection and privileges that a peace officer has by law. Section 18 of the *RCMP Act* provides that it is the duty of members who are peace officers, subject to the orders of the Commissioner:

- to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada, and the laws in force in any province in which they are employed and the apprehension of criminals and offenders and others who may be lawfully taken into custody;

- to execute all warrants, and perform all duties and services in relation thereto that may, under the *RCMP Act*, the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;

- to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and

- to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner.

This definition of the duties of peace officers includes not only the enforcement of federal and provincial laws and the execution of warrants, but also includes "the preservation of the peace" and the "prevention of crime". Section 6 of the *Security Offences Act* underscores this preventative role in the national security context by giving the RCMP primary responsibility for "the apprehension of the commission" of offences arising out of conduct constituting a threat to the security of Canada or victimizing an internationally protected person.

(b) National Security Legislation

In addition to the *RCMP Act,* a number of other pieces of legislation are relevant to the RCMP's national security mandate. Two of these, the *Security of Information Act* and the *Security Offences Act,* have been referred to above. Since September 11, 2001 there have been substantive legislative changes affecting this mandate. A detailed review of all relevant legislation is included in Exhibit 2 to the Factual Inquiry and in the background paper entitled "Statutory Framework for the RCMP's National Security Activities". Some highlights of the post 9/11 changes are set out below.

The most significant piece of post 9/11 legislation is the *Anti-terrorism Act* (Bill C-36). Among other things the *Anti-terrorism Act* added a new Part II.1, entitled "Terrorism", to the *Criminal Code*. This new Part provides a broad definition of "terrorist activity" as an act or omission that takes place within or outside Canada that is an offence under certain United Nations anti-terrorism conventions or protocols (eg. hijacking, offences against international protected persons, and hostage-taking). The definition also includes an act or omission within or outside Canada, that:

- is committed for a political, religious or ideological purpose, objective and cause,
- is committed with the intent of intimidating the public with regard to its security, including its economic security, or compelling a person, government, or a domestic or an international organization to do or to refrain from doing any act, and
- intentionally causes death, seriously harms or endangers a person, causes substantial property damage that is likely to seriously harm people, or causes serious interference with or disruption of an essential service, facility or system. Interfering with or disrupting an essential service is not a terrorist activity if it occurs as a result of advocacy, protest, dissent or stoppage of work that is not intended to harm or endanger a person or pose a serious risk to health and safety.[76]

A "terrorist activity" includes a conspiracy, attempt or threat to commit such act or omission, or being an accessory after the fact or counseling in relation to any terrorist act or omission.[77]

The *Criminal Code* makes it a "terrorist offence" to:

- knowingly participate in or contribute to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of a terrorist group to facilitate or commit terrorist activities;[78]
- knowingly facilitate terrorist activity, regardless of whether the person knows that a particular terrorist activity was planned or any particular terrorist activity was foreseen;[79]
- commit any indictable offence for the benefit of, at the direction of, or in association with a terrorist group;[80]

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[76] *Criminal Code*, s. 83.01.

[77] *Criminal Code*, s. 83.01(1.1).

[78] *Criminal Code*, s. 83.18.

[79] *Criminal Code*, s. 83.19.

- instruct another person to carry out any activity for the purpose of enhancing the ability of any terrorist group to carry out a terrorist activity;[81]
- instruct another person to carry out a terrorist activity;[82]
- harbour or conceal any person who has carried out or is likely to carry out any terrorist activity for the purpose of enabling a person to facilitate or carry out any terrorist activity.[83]

In addition, the *Anti-terrorism Act* created new "financing of terrorism" offences that encompass providing or collecting money for terrorist activities;[84] collecting, providing or making available property or financial services for the purposes of facilitating the activities of a terrorist group or for benefiting a terrorist group;[85] using or possessing property for terrorist purposes;[86] a person in Canada or a Canadian outside Canada to knowingly deal with the property owned or controlled by a terrorist group or provide financial or other related services in relation to such a property;[87] a person in Canada or a Canadian outside of Canada to fail to disclose property in their possession or control that they know is owned or controlled by a terrorist group or information about a transaction or proposed transaction in respect of such property;[88] and financial institutions that fail to report immediately on whether they are in possession of property owned or controlled by a listed entity.[89]

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[80] *Criminal Code*, s. 83.2.

[81] *Criminal Code*, s. 83.21.

[82] *Criminal Code*, s. 83.22.

[83] *Criminal Code*, s. 83.23.

[84] *Criminal Code*, s. 83.02.

[85] *Criminal Code*, s. 83.03.

[86] *Criminal Code*, s. 83.04.

[87] *Criminal Code*, s. 83.08.

[88] *Criminal Code*, s. 83.1.

[89] *Criminal Code*, s. 83.11. Note: The Governor in Council has been given the power to list entities it believes, on reasonable grounds, have knowingly carried out, participated in or facilitated the terrorist activity or knowingly acted on behalf of, at the direction of or in association with such an entity.

The scope of terrorist offences is potentially very broad. For example, although a robbery would not normally be considered a terrorist offence, it could be so classified if conducted for the benefit, at the direction of or, in association with a terrorist group. As a result of these new offences, there has been a broad criminalization of virtually all aspects of threats to the security of Canada.

The *Anti-terrorism Act* also provides police, including the RCMP, with new powers with respect to the investigation of terrorism. Sections 83.28 and 83.29 of the *Criminal Code* provide for investigative hearings which enable a peace officer, on consent of the Attorney General, to apply to a judge, in private, for an order that requires individuals with information relevant to an ongoing investigation of a terrorist offence to appear before the judge and provide that information.[90]

Section 83.3 of the *Criminal Code* allows a peace officer, with consent of the Attorney General, to lay an information before a provincial court judge who may then compel the person to appear before the judge. This provision also provides an alternative approach: arrest without a warrant, in circumstances where the police officer has a reasonably grounded suspicion that detention of the person is necessary to prevent a terrorist activity and, in the circumstances, it is impractical to lay an information. In such circumstances the peace officer is to lay the information and obtain the consent of the Attorney General "without unreasonable delay", after the detention.[91]

In relation to obtaining judicial authority for using electronic surveillance, the *Anti-terrorism Act* eliminated, for the purpose of terrorism offences, the usual requirement that other less intrusive techniques must be shown not to have been successful.[92] In addition, the authorization period for

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[90] We understand that this power has to date only been used once by the RCMP.

[91] We understand that these preventive arrest provisions have, to date, never been utilized by the RCMP.

[92] *Criminal Code*, s. 185(1.1), 186(1.1).

electronic surveillance is increased to one year from sixty days[93] and a judge may grant an extension of up to three years before a person is notified of the electronic surveillance.[94]

The *Anti-terrorism Act* also amended the *Official Secrets Act* and renamed it the *Security of Information Act*. These amendments brought terrorist groups and terrorist activities into the purview of the Act, which had previously been restricted to foreign powers. The *Security of Information Act* creates offences relating to wrongful communication of government information, unauthorized use of material and approaching prohibited places. The Act also creates offences relating to preparatory acts such as entering Canada at the direction of a terrorist group. Section 21 makes it an offence to harbour a person who has committed an offence under the Act.

The *Proceeds of Crime (Money Laundering) Act* was also amended by the *Anti-terrorism Act* and renamed the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Pursuant to section 7 of the Act, banks, credit unions and certain other companies must report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) every financial transaction that occurs in respect of which there are reasonable grounds to suspect that the transaction is related to a money laundering offence or a terrorist financing offence. Part III of the Act authorizes FINTRAC to track financial transactions that may constitute threats to the security of Canada. Pursuant to an amendment in the *Public Safety Act*,[95] FINTRAC is now also authorized to collect information that it considers relevant to money laundering or the financing of terrorism that is in "commercially available databases or that is stored in databases maintained by the federal/provincial governments for purposes related to law enforcement or national security" and are subject to an agreement. FINTRAC is also authorized to disclose "designated information" to the appropriate police force if it has reasonable grounds to suspect that this information would be relevant to investigating or prosecuting a money laundering offence for a terrorist activity offence. The Minister of Finance or FINTRAC may enter into arrangements with a foreign state or an international organization regarding the exchange of information. The

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93 *Criminal Code*, s. 186.1.

94 *Criminal Code*, s. 196.15.

95 R.S.C. 2004, c. 15, s. 100.

disclosure of designated information is restricted to purposes relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence.

While the RCMP's mandate continued to be focused on criminal activities relating to national security, the scope of crimes has increased significantly. Specifically, as a result of post 9/11 legislative changes, most, if not all, actions which affect the national security of Canada have been criminalized. In consequence, virtually all information and intelligence that CSIS would be interested in is potentially also of interest to the RCMP in connection with its national security crime prevention and law enforcement mandate.

(c) Relationship with the Minister

As noted above, section 5 of the *RCMP Act* authorizes the Governor in Council to appoint a Commissioner who "under the direction of the Minister, has the control and management of the force and all matters connected therewith". This relationship has evolved into one where the Minister provides directions to the Commissioner setting out relatively broad policy guidelines and standards. As set out in a document entitled "The Directive System", prepared by the Solicitor General's department in 1984:

> The Solicitor General Directives set standards for the RCMP in selected areas of policing activity. The directive procedure is one of the most important means by which the minister exercises his responsibility over the Royal Canadian Mounted Police.
>
> Effective policing requires the continued confidence of the public. In order to ensure that that confidence is maintained the Solicitor General must establish certain standards which balance individual rights with effective policing practices.[96]

There is obviously potential for tension between the power of the Minister to provide directions and the concept of police independence.[97] This potential arises from the issue of how far Ministerial Directives may extend into the operational activities of the RCMP. The Supreme

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[96] *The Directive System*, Exhibit 12, Factual Inquiry, Tab 21.

[97] For a thorough discussion of Police Independence, see the background paper entitled "Police Independence".

Court of Canada recently held that the power to issue directives does not extend to the direction of criminal investigations.[98]

A number of Ministerial Directives impact upon the RCMP's national security mandate:[99]

> *Ministerial Directive on Police Assistance to Foreign Nations (1981)*: sets out policies and guidelines in respect of the provision by the RCMP of police training, consultative assistance (providing advice in regard to training or an investigation) and investigative assistance (relocating RCMP staff and/or equipment to a foreign country to help with a criminal investigation in that country) to foreign countries. The directive sets out procedures to be followed in reviewing such requests and identifies the considerations to be taken into account.
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> *Ministerial Directive on RCMP Agreements (April 2002)*: deals with "agreements entered into by the RCMP to provide services, information, assets or assistance to, or receive same from other departments, agencies and institutions of municipal, territorial, provincial, federal or foreign governments, or with international organizations." This Directive provides guidance with respect to the accountability and consultation requirements for RCMP agreements.[100]
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> *Ministerial Direction Regarding National Security Responsibility and Accountability (November 2003)*: deals specifically with responsibilities and accountabilities of the RCMP in relation to investigations that fall under section 6(1) of the *Security Offences Act* and investigations related to a terrorist offence or terrorist activity as defined in section 2 of the *Criminal Code*. It affirms that the national security activities of the RCMP are under the control of the Commissioner, subject to direction by the Minister

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98 *R. v. Campbell*, [1999] 1 S.C.R. 565, at para. 33.

99 Copies of these Directives are found in Exhibit 12, Factual Inquiry, at Tabs 22, 23 and 24.

100 Note Deputy Commissioner Loeppky's view that this Directive only applies to a relatively limited number of RCMP agreements. (See Loeppky Testimony, pp. 893-896.) Specifically those where the RCMP can be seen as binding the Government of Canada. As such, in Deputy Commissioner Loeppky's view, the Directive does not apply to agreements with other organizations to exchange information and intelligence.

and that the Minister is accountable to Parliament for the RCMP and that the Commissioner is accountable, therefore, to the Minister. The directive also provides that national security investigations should be coordinated at RCMP National Headquarters. It sets out that: "Such central coordination will enhance the Commissioner's Operational accountability and in turn, will enhance ministerial accountability, by facilitating the commissioner's reporting to the Minister." The Commissioner is obliged to keep the Minister apprised of all national security investigations that may give rise to controversy.

Ministerial Direction Regarding National Security Related Arrangements and Cooperation: "establishes the process for the RCMP to follow when entering into an arrangement with foreign security or intelligence organizations for the purposes of performing its duties and functions with respect to matters that fall under subsection 6(1) of the *Security Offences Act* and those related to a terrorist offence or terrorist activity as defined in the *Criminal Code*". The directive provides that "the RCMP may, with the Minister's prior approval, enter into a written or oral agreement, or otherwise cooperate, with foreign security or intelligence operations". It does not, however, apply to arrangements in cooperation with foreign law enforcement agencies or organizations. It should be noted that the RCMP has relatively few arrangements and/or agreements with foreign intelligence agencies as this is generally left to CSIS. The directive provides for consultation with DFAIT and CSIS regarding such matters. It also sets out a requirement that all such arrangements will be recorded in writing and that the Commissioner is obliged to report to the Minister annually on the status of such arrangements.

Ministerial Direction Regarding National Security Investigations in Sensitive Sectors (November 2003): defines "Sensitive Sectors" as "fundamental institutions of Canadian society [including] institutions in the sectors of academia, politics, religion, the media and trade unions". All investigations involving sensitive sectors must be pre-approved by the Assistant Commissioner, Criminal Intelligence Directorate or his/her designate. The Directive also provides that in regard to university or post-secondary campuses, "it is paramount that the investigations undertaken by the RCMP do not impact on the free flow and exchange of ideas normally associated with an academic milieu".

(d) Internal Policies

The activities of RCMP personnel in the national security context are also regulated by a number of internal policies. We will not review each policy which may be relevant to the RCMP's national security mandate herein. The relevant portions of the RCMP Policy Manuals can be found at Tabs 25 to 41 of Exhibit 12 in the Factual Inquiry. Further discussion of aspects of these policies is included in other subsections of this Paper.

In general terms, there are policy provisions dealing with: national security investigations (including the requirement that the RCMP will not gather information on or investigate organizations engaged in lawful activities unless allegations or intelligence justify such actions); the requirement that national security investigations are to be conducted by the National Security Investigation Sections (NSIS) or Integrated National Security Enforcement Teams (INSETs); the requirement that members respect the rights of those who are the subject of an investigation; a definition of national security and a threshold for identification of a matter as a national security matter; reporting requirements; the RCMP/CSIS exchange program; RCMP agreements; and information sources and human sources.

(ii) Organization of the RCMP's National Security Activities

(a) Organizational Overview

The organization of the RCMP's national security activities has undergone significant changes since the time of the McDonald Report and again since September 11, 2001. The focus herein will be on the current organizational structure, with reference where appropriate, to earlier practice.

The Commissioner of the RCMP is assisted by a number of Deputy Commissioners: one for each RCMP Region or Division (Atlantic, Central, North West and Pacific); and one each for Strategic Direction, Corporate Management and Operations.[101] The RCMP's national security mandate is among the responsibilities of the Deputy Commissioner – Operations. Other areas within the mandate of the Deputy Commissioner – Operations include Federal and International

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[101] See Appendix B attached. (This Chart is taken from Exhibit 12 of the Factual Inquiry, Tab 2.)

Operations; Protective Policing; CCAPS; Criminal Intelligence, Technical Operations and Criminal Intelligence Services.

Since the establishment of the Criminal Intelligence Directorate (CID) in 1991, national security matters have come within the ambit of the CID. As noted previously, the CID was created as an important component of intelligence-led policing. The CID is headed by an Assistant Commissioner who reports to the Deputy Commissioner – Operations. In addition to the national security function, CID also includes the Criminal Intelligence Support Branch, the Organized Crime Intelligence Branch, the National Operations Centre and the Director General Intelligence Analysis and Communications. The location of Headquarters national security functions within the CID, replaced a structure in place from 1988 to 1991 involving a National Security Investigations Directorate, the head of which reported directly to the Deputy Commissioner Operations.

In 2003 a new reporting function was created directly under the CID: the Director General National Security. The Director General reports to the Assistant Commissioner CID. The Director General is, in turn, responsible for two branches and a group: The National Security Intelligence Branch (NSIB); the National Security Operations Branch (NSOB); and Policy, Planning and Development.[102]

RCMP National Headquarters is responsible for coordinating virtually all activities relating to the national security mandate. In addition, the branches, sections and units within that National Security Directorate are responsible for the analysis and management of national security information and intelligence, as well as the production of products such as threat assessments and other national security information.

Most of the investigatory work on national security matters is done at the divisional level. Such work is undertaken by NSIS and, in Montreal, Ottawa, Toronto and Vancouver, by INSETs. The

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[102] See Appendix C attached (i.e. Chart 5 from Exhibit 12, Factual Inquiry).

work of both NSIS and INSETs is coordinated by National Headquarters and they both report, through Divisional Criminal Operations, to the NSOB.[103]

We examine four elements of the organizational structure in more detail: NSIB; NSOB; the Criminal Extremism and Analysis Section; and NSIS, INSETs and other integrated teams. It is important to note, however, that there is often overlap in what the various branches and units do.

(1) National Security Intelligence Branch

The organization of the NSIB is set out in Appendix E attached.[104] The NSIB is responsible for the assessment, co-ordination, monitoring and direction, when necessary, of all national security investigations and intelligence at the national and international level. The primary mandate of the NSIB is to collect and analyze intelligence in relation to the RCMP's national security mandate. The NSIB is also responsible for identifying potential strategic approaches to national security investigations and for producing tactical analytical products. We are informed that once offences are identified by the NSIB the matter is moved to NSOB (discussed below) for coordination and tactical implementation. There is of necessity cooperation and overlap among the branches, sections, units and groups within the National Security Directorate. The following eight Sections or Groups come within the responsibility of NSIB:

The Protective Intelligence and Threat Assessment Section

The primary role of this section is to maintain the National Threat Assessment Program (NTAP). The NTAP provides support to the RCMP for its protective responsibilities including protection of: embassies, consulates or missions within Canada; Internationally Protected Persons; airports, carriers, and air routes; and the Canadian executive cadre. The Section monitors events and prepares threat assessments on national security issues which may have an impact on threats posed to Canada or to Canadian interests abroad.

There are 3 units within the section:

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[103] See Appendix D attached (i.e. Chart 11 from Exhibit 12, Factual Inquiry).

[104] I.e. Chart 6 from Exhibit 12, Factual Inquiry.

International Protective Intelligence Unit: This unit develops threat assessments for foreign embassies, consulates and missions within Canada. It also provides threat assessments for foreign visitors to Canada (Internationally Protected Persons) and in respect of major events in Canada and is responsible for preparing background checks for Order-in-Council appointments.

Civil Aviation Protective Intelligence Unit: This unit identifies flights and routes in Canada that may face terrorist action or other threats and provides threat assessments to Canadian and international airports, air carriers and routes. It also supports the Canadian Air Carrier Protective Program which assigns RCMP officers to certain Canadian flights.

Canadian Executive Protective Intelligence Unit: This unit develops threat assessments relating to the Canadian executive cadre (including the Prime Minister, Governor General, Cabinet Ministers, MPs, Senators and Supreme, Federal and Tax Court judges) both inside Canada and when they are travelling abroad. The unit is also responsible for the co-ordination and maintenance of the VIP Surveillance Subject Program which identifies, investigates, assesses and monitors individuals who have shown a criminal or "abnormal" interest in the Canadian executive cadre, government officials or Internationally Protected Persons.

The Protective Intelligence and Threat Assessment Section also includes a *Public Safety Act* Project Co-ordinator, whose function it is to provide support to the Minister of Public Safety and Emergency Preparedness in respect of the *Public Safety Act*.

The Terrorist and Criminal Extremist Special Projects Group

This group is responsible for the co-ordination and development of intelligence relating to terrorist activity and criminal extremism[105] from a national perspective, in support of

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[105] We are informed that the definition of 'criminal extremism' utilized by the RCMP is the commission of criminal acts for ideological motives or in furtherance of ideological goals. The motivating ideologies may be

national security investigations, and the deployment of counter-terrorism strategies. Specifically, the group is responsible for promoting and implementing counter-terrorism and anti-terrorist strategies, activities, procedures, policies and standards to identify and understand how extremist organizations recruit, operate and maintain their organizations. It develops intelligence packages to focus enforcement efforts. It also develops relationships and maintains liaisons with other entities in the domestic and international law enforcement community. The Terrorist and Criminal Extremist Special Projects Group also collects and collates information, intelligence and evidence to support the listing of entities as Terrorist Entities pursuant to section 83.05 of the *Criminal Code*. In this regard, the Group assists the Department of Justice in judicial reviews; it monitors appeals and reviews of listings; and assists with the revocation of charitable registrations of terrorist groups.

Anti-Terrorist Financing Group

The Anti-Terrorist Financing Group supports counter-terrorism strategies, financial intelligence gathering and financial investigations. It also monitors financial operations from a national perspective and implements counter-terrorism financing strategies, activities, procedures, policies and standards.

Critical Infrastructure Intelligence Section

This section is managed jointly by the NSIB and the Criminal Analysis Branch.[106] It focuses on threats to critical infrastructure. Its work includes producing threat and risk assessments, indications and warnings, and intelligence assessments relevant to critical infrastructure as well as providing support to investigations related to threats to critical infrastructure.

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political or religious. This excludes crimes committed only for personal gain, and crimes committed for other personal reasons.

[106] The Criminal Analysis Branch is a branch within the CID.

(2) National Security Operations Branch

The organizational structure of the NSOB is set out in Appendix F attached.[107] Like the NSIB, the NSOB also monitors, assesses, co-ordinates and directs all RCMP national security investigations from a national and international perspective. In contrast to the NSIB, the NSOB is focussed on coordinating national security related investigations across the country. The NSOB is also responsible for ensuring compliance with RCMP policies; personnel within NSOB prepare subject profiles, case briefs and briefing notes for senior management; and assist the Commissioner in his responsibility of informing the Minister of high profile national security investigations which may give rise to controversy.

The NSOB includes Source Development Units, which are responsible for developing human sources for national security investigations. They report to and take their instructions from INSETs (discussed below). We are informed that in practice INSETs identify gaps within investigations they are working on and task the SDU to develop human sources to help fill those gaps. The existence of SDUs does not prevent INSET members from carrying out their own source development.

(3) Criminal Extremism Analysis Section

The Criminal Extremism Analysis Section is administered outside the National Security Directorate by the Criminal Analysis Branch. However, analysts in the section do tactical and strategic analysis in support of the national security program. The Criminal Extremism Analysis Section produces three types of intelligence: Strategic Intelligence, which involve assessments that support operational and policy decision making by senior managers of the RCMP, including decisions on resources allocated to investigations (this includes "SLEIPNIR Threat Measurement" assessment and an annual report for consideration by Criminal Operations Officers (CrOps) when they determine national strategic and tactical priorities for all RCMP operations including national security); Current Intelligence, including assessments which support operational and policy decision making by Threat Assessment Branch and by Protective

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[107] I.e. Chart 8 from Exhibit 12, Factual Inquiry.

Policing Services; and Tactical Intelligence, in the form of charts and assessments that support investigations. Tactical analysts in CEAS are given specific clients, and one tactical analyst is assigned to each of NSOB, NSIB and the Anti-Terrorism Financing Group. These analysts, when requested, also provide analytical support directly to Divisional INSETs and NSIS. Tactical analysts in the Divisions also support the INSETs. Specific areas of expertise developed in CEAS include expertise in terrorism / criminal extremism; expertise in distinct types of criminal activities used by terrorists, such as chemical and biological terrorism, money laundering, and suicide bombing; and expertise in the intentions, capabilities and activities of specific terrorist groups and movements operating in Canada.

(4) NSIS, INSETs and other Integrated Teams

NSIS and INSETs operate at the Divisional level and have primary responsibility for carrying out criminal investigations in national security matters. NSIS were first created in 1988 to conduct national security investigations. There were originally 14 NSIS. Each is made up solely of RCMP personnel.

After 9/11, four of the NSIS were converted to INSETs. INSETs are integrated teams that include both RCMP officers and personnel from provincial and municipal forces as well as non-police agencies. They are an illustration of the RCMP's current strategy of integration which has been implemented to create efficiencies and improve the effectiveness of policing when there are overlapping jurisdictions and interests. Integrated units are not restricted to national security matters and are employed in other areas such as organized crime. Other integrated units relevant to the RCMP's national security mandate include Integrated Border Enforcement Teams (IBETs) and Integrated Immigration Enforcement Teams (IIETs).

Members of INSETs include regular RCMP members, provincial police, municipal police, CSIS members, Canada Border Services Agency (CBSA) employees, employees of Citizen and Immigration Canada (CIC) and employees of Revenue Canada.

Because of their integrated nature, the exact nature of the responsibilities among the various partner agencies involved in INSETs is not always clear. As yet, there are no formal agreements in place among such agencies regarding INSETs generally. Members of other police services

who join an INSET are seconded to the INSET and are made Supernumerary Special Constables in the RCMP. There are agreements in place between the RCMP and other police services regarding this status. We have examined one such agreement which provides that the officer from a municipal service shall be supervised by the RCMP, but shall remain under the jurisdiction of the municipal service's disciplinary process as well as the appropriate civilian oversight agency. Pursuant to the agreement, the municipal service agrees to hold harmless and indemnify the RCMP in respect of claims arising from the conduct of the officer.[108] The activities of INSETs are coordinated and overseen by RCMP National Headquarters. The RCMP maintains that it is fully accountable for the operations of INSETs and that RCMP policies and rules apply to the actions of INSET members.

While members of INSETs and NSIS are focused on national security criminal investigations, they perform a wide variety of duties associated with the RCMP's national security mandate. These include: conducting criminal investigations; threat evaluations and strategic risk assessment reports; collection and analysis of information and criminal intelligence concerning potential threats to national security as well as disseminating such information to the divisional criminal operations branch and the CID; monitoring investigations of joint interest conducted by other police services or government agencies; development and maintenance of sources; Order-in-Council checks; and support and expertise for other RCMP units, as well as other federal, provincial and municipal agencies.

IBETs and IIETs also have mandates related to national security. IBETs are responsible for enhancing border integrity and security by identifying, investigating and interdicting persons and organizations that pose a threat to national security or are engaged in organized criminal activity. This includes threats from terrorism as well as smuggling of drugs, humans, cigarettes and other substances. Unlike INSETs, IBETs include both U.S. and Canadian law enforcement agencies. However, international personnel act as liaison resources only.[109] In addition to RCMP

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[108] We are informed that no such indemnity provision is included in the RCMP/CSIS secondment agreement.

[109] It should be noted that Canadian and U.S. agencies also work on joint investigations outside the context of IBETs.

personnel, IBETs include personnel from the CBSA, US Customs, US Immigration[110], state, provincial and local police agencies on both sides of the border and the U.S. Coast Guard. There are IBETs deployed in 25 locations along the Canada/U.S. border. IBET members will pass information to INSETs if the information or intelligence relates to a national security offence. INSETs will then take the lead in any investigation supported by the IBET as required.

IIETs are jointly staffed by the RCMP and CBSA. Their role involves addressing national security threats as they relate to immigration. Responsibilities include the review and prioritization of outstanding immigration warrants; location, tracking and apprehension of those who are at large; identifying potential security threats; investigating illegal use of Canadian passports; and investigating citizenship fraud. There are three IIETs, located in Montreal, Vancouver and Toronto.

When a national security related criminal matter (or the potential for such matter) surfaces, IIETs are required to immediately notify the nearest INSET. At that time an assessment is made by the INSET as to whether or not they will take the lead in the investigation. Each IIET team has established a direct communication with the local INSET and the units communicate on a regular basis.

(b) Number of Personnel involved in the National Security Mandate

Between Headquarters and the Divisions, the RCMP has a total of 285 personnel directly involved in national security activities. This includes individuals working in NSIS, INSETs, NSOB, NSIB and the Criminal Extremism Analysis Section. However, it does not include RCMP personnel participation in IIETs or IBETs.[111] Of the personnel identified, 213 are regular RCMP Members, 52 are seconded from other police forces and government agencies, and 20 are civilians.

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[110] U.S. Customs and U.S. Immigration no longer exist. They have been replaced by the Customs and Border Protection Bureau and Immigration Customs Enforcement.

[111] We understand that 150 RCMP personnel are assigned to IBETs. There are to be 24 RCMP personnel assigned to IIETs when they are fully staffed in 2005/06.

It should be noted that it is difficult to obtain a precise number of how many personnel are actually involved in national security matters because, in many cases, there is overlap with other departments and areas. This is particularly so at the outset of investigations involving matters such as money laundering and immigration offences, which may be commenced in another area and later develop into a national security investigation. Those involved in national security matters will also make use of expertise that is found elsewhere in the RCMP. In addition, in remote areas, where there are no dedicated national security personnel, other members are used as required. Finally, in the case of emergencies such as 9/11 other personnel are brought in as the need dictates.

(c) Recruitment and Training

We are informed by the RCMP that the basic requirement for recruiting regular members into a national security related position is several years of criminal investigation work. When recruiting members to a specialized investigative team, managers will look for specific skills that may be needed to strengthen the team. The criteria considered include:

- a top secret security clearance;
- experience investigating major cases (especially in the case of supervisors);
- specific skills such as affidavit writing or file management;
- source development capabilities;
- interpersonal skills;
- an "above average interest" in worldwide current events;
- specialized investigational experience; and
- above average written and oral communication skills.

Training is available to members working in national security. The most pertinent courses are: the National Security Enforcement Course; and a Bill C-36 Anti-Terrorism course designed and supervised by the Department of Justice. Approximately 90% of INSET/NSIS members have completed these courses. Other courses include:

- the Secure Criminal Information System;
- the National Criminal Databank;
- Terrorist Financing;
- Source development and handling;
- Proceeds of Crime;
- Hostage Negotiation;
- Major Case Management;
- Criminal Intelligence Officer's Course;
- Cross-cultural issues, and cultural awareness information;
- Surveillance Techniques;
- Immigration and Passports;
- Internet Investigations; and
- Threat Assessment.

The criteria for recruiting civilian members into a national security position, depends on the requirements of the specific position. We are told that an analyst position has the following minimum requirements:

- a top secret security clearance;
- a Bachelor's degree;
- several years experience in researching, writing, analysing and editing documents as well as experience in a publishing, research or analytical environment;
- experience with computers and word processing;
- above average oral and written communication skills; and
- an ability to fulfill the language profile for the position.

We are informed that the training and courses which have been taken by civilians employed in national security work include courses in intelligence analysis at the Canadian Police College; and many of the other courses available to members which are set out above.

(iii) From Where Does National Security Work Originate?

National security work at the RCMP can be initiated either at National Headquarters or at the INSET/NSIS level. Within the RCMP, Headquarters is the primary source of national security work. Work from Headquarters in turn originates from either external or internal sources. A significant amount of national security work originates from outside sources in the form of requests for assistance or leads relating to the commission of an offence. We are informed that a significant amount of this work comes from CSIS. Virtually all outside requests from government agencies, including CSIS, and foreign authorities are made through Headquarters. Headquarters evaluates such requests and assigns them to the appropriate units including NSIS and INSETs.

Another major component of national security work is internally generated. Each year there is a meeting of RCMP Criminal Operations Officers (CrOps) at which tactical and strategic priorities are set. While CrOps involves all of Criminal Operations, strategic priorities and specific projects relevant to the national securities mandate are established at these meetings as well. After the priorities are established, assignments in support of these priorities are allocated by Headquarters.

Some national security work comes in through the INSETs and NSIS as a result of direct contacts with police officers in those units, tip lines, official complaints, and requests for assistance from other agencies or other police services. The INSET or NSIS field officer who receives such information may commence an investigation. RCMP Policy requires the field officer to immediately notify the Assistant Commissioner Criminal Intelligence, through the divisional CrOps officer of:

- potential threats to national security or an Internationally Protected Person;
- known or suspected criminal extremists located in or traveling to Canada;
- information, offences, incidents, or circumstances that may have a national security interest, focus or implication, but not limited to, the list in the terrorism provisions of the *Criminal Code*, immigration and passport offences, credit card fraud and other related street crimes that can be used to support terrorist activities;

- before starting any national security sensitive sector investigation;
- during the course of an investigation when the officer becomes aware that a sensitive sector may be involved;
- all operational plans for national security investigations, including undercover operations; and
- when it is believed that an incident or information will generate media interest.[112]

The field officer is also required to inform the Assistant Commissioner of any proposed operational plans for long term investigations concerning national security.

(iv) Information and Intelligence Management, Retention and Sharing

An important component of the RCMP's national security activities involves the collection, management, retention and sharing of information and intelligence. As noted above, the RCMP collects and retains a broad range of information and intelligence and, while this includes information that is directly related to potential prosecutions, or that could be related to prosecutions, it also includes information and intelligence that is better described as "contextual" or background information.

In this section we describe the storage and dissemination of such information. The discussion is divided into three topics: how national security information comes into the RCMP; how that information is stored and maintained; and how the information is disseminated.

(a) Information Coming into the RCMP

At the core of the RCMP's national security information management system is the Secure Criminal Information System (SCIS). SCIS is a classified database which stores all information and intelligence that has a national security dimension. It is separate from all other RCMP databases. There are also other criminal intelligence databases including databases that are

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[112] See Exhibit 12, Factual Inquiry, Tab 39, s. E.

shared with other police agencies. An example of the latter is the Automated Criminal Intelligence Information System (ACIIS) which is available to all police agencies who are members of the Criminal Intelligence Service Canada. Our understanding is that national security information and intelligence is stored exclusively on SCIS.[113]

National security information and intelligence enters the SCIS system in a variety of ways. Some of it is obtained internally as a result of investigations by field officers. A substantial portion is obtained from external sources; both domestic sources, such as CSIS, other police agencies, and other governmental departments; and international sources including foreign police and intelligence agencies. Information is entered in the SCIS system either by CID or by divisional officers.

The decision about whether to include information in SCIS is left to the judgment of the person entering it. The criteria applied are straightforward: the information should be relevant and important to a national security investigation. The overall approach is one of broad inclusion.[114] We are informed that this approach is taken for a number of reasons. First, pursuant to the standards set by the Supreme Court of Canada in the *Stinchcombe* case, the RCMP is bound to ensure that all investigation files are complete. A complete file is required to include both inculpating and exculpating information concerning the accused. It will often include information about individuals with whom the target of the investigation has come into contact. In this regard, the RCMP notes that seemingly benign information can provide a potential accused with alibi evidence. Further, given that an individual may surface numerous times during the course of an investigation, having information in the file about that individual ensures that he or she is not repeatedly reinvestigated. The RCMP has also noted that the status of an individual may change during the course of an investigation. An individual who in the early

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[113] Obviously information and intelligence which was originally collected as part of another type of investigation may also be stored on another database.

[114] The RCMP Informatics manual Part I.4.D.2 provides: SCIS will be used for all national security criminal investigations and intelligence sequential records in the Criminal Intelligence Program that are initiated and concluded within a defined time frame. Any and all relevant material, whether is unclassified, such as open source, classified or designated, may be uploaded to SCIS, as long as it is in support of national security investigations or intelligence files.

stages may be a complainant, witness or person of interest may ultimately be implicated in a crime.

We are informed that the broad inclusory approach for national security information is also based on a risk analysis undertaken by the RCMP. Specifically, given that the consequences of national security crimes may be extremely serious, there is too much at stake not to include information in the databank.

Certain information about the quality of the information is also entered in the SCIS system. In many cases both the source of the information and the information itself are classified as follows:

- **Reliable (R)** is a combination of proven accuracy of information and proven dependability of a person. Every effort **must** be made to validate information before grading it reliable.

- **Believed Reliable (BR)** applies if the qualifying conditions of reliability are not yet met, but the existing knowledge of the source is favourable and it is believed he/she will eventually prove reliable.

- **Unknown Reliability (UR)** applies if there is insufficient experience with the source for assessment or when information cannot be verified.

- **Doubtful Reliability (DR)** applies if there is doubt about the source or the information.

- Information for court purposes must include a "**C**" in the assessment, e.g., **BRC**, Believed Reliable – can be used for court purposes.[115]

These classifications will not always be included with information. For example, in cases where a field officer observed conduct himself/herself, it is assumed such information is of the highest

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[115] Criminal Intelligence Program Guide, Exhibit 12, Factual Inquiry, Tab 44, p. 7.

quality. In addition, if information is received from outside sources it may not be classified, or it may be classified differently. In such circumstances, all available information on the quality of the source and information is to be uploaded into the system.

Much of the information received by the RCMP from outside sources contains caveats or restrictions on the use to which the information can be put. Caveats are discussed in more detail below. They are raised here to note that any caveats or restrictions on the use to which information can be put is entered into the system as well.

Finally, the level of protection or classification (eg. 'Top Secret') of the information is also recorded in the system.

(b) How Information is Stored and Maintained

As noted above, all information and intelligence gathered in connection with the RCMP's national security mandate is stored in the SCIS system. The SCIS system is a centralized automated system that incorporates the National Secure Index, a secure PIRS, as its operational file indexing base and the National Secure Information Bank as its secure unlimited searchable free text narrative data bank.[116] It is a protected system and it is the policy of the RCMP to classify all information on the data bank. However, the system is designed to allow any RCMP program area to use it under specific conditions. We are advised that general access is restricted to those RCMP personnel involved in national security matters that have the appropriate security clearance on a need to know basis. We are advised that non-RCMP members seconded to INSETs also have access to SCIS but this should be only for INSET investigative purposes.[117] Non-RCMP members not seconded to INSETs (e.g. members of another agency with which the RCMP is conducting a joint investigation) and non-RCMP members assigned to IBETs and IIETs do not have direct access to SCIS. However, access to specific information can be

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[116] Exhibit 12, Factual Inquiry, Tab 44, p. 7.

[117] Such individuals are required to sign an agreement providing that they will not query SCIS for personal use nor disseminate any information obtained from SCIS to outside agencies including their home agency.

provided on a need to know basis. Information on the system can also be shared with others on the same basis.

The SCIS Section of the RCMP performs periodic quality reviews of the data entered into the system. These reviews are intended to ensure the integrity of the information and compliance with RCMP policies and procedures. Such reviews are also to be conducted by each Unit Commander in the Divisions.

All police files, regardless of the medium of storage, have a retention and disposal schedule developed by the Director of Information Management Branch in accordance with various legislative requirements. All retention and disposal schedules are to conform with federal legislation and policies and be approved by the National Archivist. When a concluded date is entered for an occurrence, the system generates a purge date. It should be noted that because of their nature, many national security investigations remain open and not subject to purge for a considerable period of time. When a file is set to be purged, its contents are either destroyed or made historical and archived. We are informed that historical files are typically major national security-related criminal investigations such as the Air India Investigation, or the bombing of the World Trade Center. These investigations are considered to be of such importance that their contents are stored indefinitely. We are informed that they are regularly reviewed so that once they no longer satisfy this criterion they are destroyed.

(c) Dissemination and Information Sharing

The RCMP's national security information and intelligence is obviously available for internal RCMP purposes. While coordinated at National Headquarters, it is accessible to RCMP members of NSIS and INSETs as needed. Depending on requirements, it may also be provided to other programs and units within the RCMP.

National security information and intelligence is also shared with other agencies both domestic and foreign. The RCMP is bound by agreement and in some circumstances required by legislation to share information with others. For example, as noted above, the RCMP is obligated by the RCMP/CSIS MOU to provide CSIS with information relevant to its mandate. Certain international treaties and conventions require the sharing of information related to

terrorism and other national security matters.[118] In addition to legislative, contractual and treaty obligations, there are also times when circumstances, such as an emergency, will require the RCMP to share information.

Requests for information and decisions as to whether and, if so, what information will be provided to other agencies are, for the most part, made by National Headquarters. In addition, however, informal information sharing regularly takes place at the field officer level. For example, in circumstances where there is a joint investigation with another police agency, information exchanges may take place on an officer to officer basis.

With the exception of the CSIS/RCMP MOU, RCMP national security information exchanges are not generally governed by formal written agreements. The RCMP has well in excess of 1000 MOUs with other agencies respecting matters such as training, the sharing of police technologies, services and agreements. There are also a number of written agreements in place to share various types of data such as fingerprints, criminal records and DNA. However the exchange of national security intelligence and information is generally governed by less formal arrangements.

There are also few Ministerial Directives and RCMP Policies which deal directly with the exchange of national security information and intelligence. While a number of Ministerial Directives and RCMP Policies relate to agreements with other entities, such directions and policies do not apply to all such interactions. For example, the April 2002 Ministerial Directive dealing with RCMP Agreements appears to apply to a fairly limited range of agreements. Specifically, it appears to apply only to those agreements which would bind the government of Canada. This includes agreements to supply training, equipment or know-how to another country, but does not govern information exchanges.

A more specific Directive was provided in November 2003 dealing with National Security Arrangements and Cooperation. While this Directive covers exchanges of information by the

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[118] See more discussion of treaties and conventions in the next section of this paper.

RCMP, it is restricted to arrangements and cooperation with foreign security and intelligence organizations and does not apply to foreign law enforcement agencies. Therefore, while the Directive and the RCMP policy carrying out the Directive would apply to arrangements and cooperation between the RCMP and the CIA, they would not apply to interactions between the RCMP and the FBI. This Directive requires the RCMP to have a written record of oral agreements with foreign security intelligence (as opposed to law enforcement) agencies, to seek prior Ministerial approval and to report annually to the Minister on the status of written and oral arrangements with foreign security or intelligence organizations.

The RCMP is currently developing a criminal information sharing (including national security information) MOU template and guide to help to manage the exchange of information and intelligence with outside agencies and to ensure compliance with applicable laws and regulations. This generic MOU will codify guiding principles and expectations governed by appropriate legislation and serve as a management tool for sharing of information and intelligence. However, the RCMP has told us that the template is not intended to replace case by case information sharing among police agencies in accordance with accepted principles.

Despite the absence of formal written agreements, relationships and information sharing arrangements exist with many other police agencies in Canada and abroad. The RCMP has stated: "Virtually every major investigation has multi-jurisdictional aspects, as such information sharing among enforcement agencies is crucial to the successful resolution of these investigations. To negotiate and maintain written agreements with all agencies that provide or receive information internationally and domestically would effectively bring investigations and international cooperation to a halt. There are over 18,000 law enforcement agencies in the U.S. alone. Some agencies, especially security intelligence agencies, refuse to enter into written agreements and prefer to rely upon verbal agreements and professional standards within the law enforcement community to protect their information." Consequently national security information sharing is both frequent and relatively informal.

RCMP policy provides that release of information and intelligence is to be done on a case by case, "need to know" basis.[119] We are told by the RCMP that relationships are governed by common understandings and protocols. Some such understandings and protocols are quite clear. For example, we discuss below the concept of caveats. However, others involve relatively general statements such as the fact that decisions with respect to information sharing are to be guided by "the broader policy objectives and values of the Canadian government".

Some guidance in regard to information sharing is provided by the RCMP Policy Manual. For example, in respect of enquiries from foreign governments, the "Information Sources" portion of the RCMP's Operations Manual provides that:

> The RCMP will not become involved or appear to be involved in any activity that might be considered a violation of the rights of an individual, unless there is a need to comply with the following international conventions:
>
> 1. United Nations Conventions on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, article 4(b) or through membership in such bodies as Interpol;
>
> 2. the 1979 Convention Against the Taking of Hostages;
>
> 3. the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal);
>
> 4. the 1970 Convention for the Suppression of the Unlawful Seizure of Aircraft (the Hague); or
>
> 5. the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo).[120]

The Manual also provides:

> The disclosure of information to an agency of a foreign government that does not share Canada's respect for democratic or human rights may be considered if it:

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[119] Exhibit 12, Factual Inquiry, Tab 27, E.15, c.1.

[120] Exhibit 12, Factual Inquiry, Tab 31, s. M3a.

1. is justified because of Canadian security or law-enforcement interests,

2. can be controlled by specific terms and conditions, and

3. does not have a negative human rights connotation.[121]

Guidance is also provided by the *Canadian Charter of Rights and Freedoms* and Canadian privacy legislation. In regard to the *Charter*, Deputy Commissioner Loeppky testified in the Factual Inquiry hearings that the RCMP would not provide information to a foreign agency if it knew that such agency would use the information to violate the rights of a Canadian citizen. However, we are not aware of any guidelines covering more specific issues such as the level of certainty that a rights violation will not occur before information can be passed on and who should make the assessment about whether such level of certainty exists.

RCMP policy[122] cautions that disclosure of personal information must be made in accordance with the *Privacy Act*. The *Privacy Act* generally prohibits the exchange of personal information without the consent of the person to whom the information relates, unless a specific exception applies. Two exceptions are commonly relied on by the RCMP. The first is 'Consistent Use Disclosure' which provides that if personal information is collected for one law enforcement purpose, it may be released for another such purpose without the consent of the individual involved. The term 'law enforcement purpose' is interpreted to mean law enforcement in other jurisdictions. The second exception is 'Public Interest Disclosure' which allows disclosure in circumstances where the public interest in disclosure clearly outweighs any privacy interest. Disclosure is also allowed under an agreement or arrangement with another police body or security and investigative body and their international counterparts. This exception requires a written request for information and permits only that portion of personal information actually required. There are also other exceptions outlined in the Policy, which are relied on less frequently by the RCMP. Decisions about whether an exception applies are made by the individual who releases the information.

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[121] Exhibit 12, Factual Inquiry, Tab 31, s. M3b.

[122] Exhibit 12, Factual Inquiry, Tab 27, s. L.2.

It is important to note that the use of caveats is common among the RCMP and the agencies from which information is obtained. Caveats outline the conditions under which information is provided to or by another agency and specify directions/conditions respecting its use. The RCMP Operations Manual sets out the following caveats for the dissemination of national security information by the RCMP:

1. The following condition must be included in all outgoing correspondence, messages and documents being passed to CSIS, other federal government departments, and any Canadian Police Force,

   "This record may be subject to mandatory exemption under the Access to Information and Privacy Acts. If access is requested under that legislation, no decisions to disclose should be taken without prior consultation with the Departmental Privacy Coordinator of the RCMP."

2. The following conditions must also be included in all outgoing correspondence, messages and documents being passed to other domestic and foreign law enforcement agencies/departments:

   "This document is the property of the RCMP. It is loaned to your agency/department in confidence and is not to be re-classified or further disseminated without the consent of the originator.

   This document is the property of the Government of Canada. It is provided on condition that it is for use solely by the intelligence community of the receiving government and that it not be declassified without the express permission of the Government of Canada."[123]

The RCMP informs us that it is a well-established understanding in law enforcement and security communities that caveats similar to the one set out in the RCMP Policy Manual are implied, even when they are not stated explicitly.

We are informed that in addition to caveats, the reliability classification discussed above in relation to information coming in the SCIS database is also provided to outside agencies when

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[123] Exhibit 12, Factual Inquiry, Tab 27, Appendix 1-3-8.

information is shared. We are unaware of any policy which specifically sets out this requirement.

(v) Interaction with Other Agencies[124]

The RCMP has significant interaction with other agencies, both domestic and international, in connection with its national security mandate. We have already discussed the concept of integrated policing through INSETs, IBETs and IIETs. Beyond these entities the RCMP has interaction with many other outside entities, primarily for the purpose of exchanging national security information and intelligence. We describe below the organizations with which the RCMP has significant regular interaction in relation to national security.

(a) CSIS

The interaction between CSIS and the RCMP has already been discussed at length. As set out above, CSIS and the RCMP have complementary legislative mandates. CSIS is responsible for detecting and analyzing threats to the security of Canada; while the RCMP is responsible for preventing and investigating crimes related to national security.

The primary form of interaction between the two agencies is the exchange of information. A significant portion of the national security related information and intelligence which the RCMP receives, comes from CSIS.[125] In consequence, a significant amount of the national security work which the RCMP does is initiated by information received from CSIS. CSIS is required by the CSIS/RCMP MOU to provide the RCMP with intelligence relevant to the matters of national security offences. However, CSIS is not obliged to share information that would disclose the identity of a source, nor is it obliged to pass on information that has been caveated by a third party. When the RCMP conducts an investigation based on CSIS information, it provides CSIS with updates on the status of the investigation. The RCMP also provides CSIS with national

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[124] We are continuing to conduct further research including consultations with relevant groups on the extent of interaction among the RCMP and other agencies, both domestic and foreign, in relation to its national security activities.

[125] It should be noted that the majority of national security information received by the RCMP comes from the public, from other federal bodies and from other foreign and domestic police agencies.

security information and intelligence that it has collected. Information sharing between the two organizations takes place both orally and in writing. We are informed by the RCMP that a smaller portion is shared verbally and only after written communication has been established.

CSIS is intended to be the prime Canadian contact with foreign intelligence agencies (as opposed to foreign policing agencies). As such, CSIS sometimes performs the role of conduit between the RCMP and such agencies. At other times, contact is made directly to the RCMP by a foreign intelligence agency; and in such cases, the RCMP keeps CSIS informed. This is particularly so in respect of agencies with which the RCMP has a long-standing relationship.

Beyond information exchange, the RCMP and CSIS also provide each other with operational support and assistance. For example, in circumstances where federal security is required at special events, CSIS provides threat assessments and other intelligence products to the RCMP. The RCMP also assists CSIS by conducting security assessments in areas not serviced by CSIS; and by providing operational assistance with respect to CSIS's Protective Security mandate. In addition, CSIS has undertaken to provide the RCMP with support and assistance with respect to the management of its national security mandate.[126]

In order to foster cooperation between the two agencies, the RCMP and CSIS have had secondments and liaison officers working at each other's agencies. The liaison program has now been replaced entirely with a secondment or exchange program. The stated purpose of the program was to further advance each organizations understanding of their respective mandates. We are informed that all four INSETs have a CSIS employee seconded to the teams. In addition, at the officer level, the RCMP has a CSIS manager in charge of its Threat Assessment Section at Headquarters. All four INSETs also have an RCMP member seconded to CSIS and an RCMP Inspector is seconded to CSIS Headquarters at the management level. There is also an RCMP analyst from the Criminal Analyst Bureau seconded to the Integrated Threat Assessment Center (discussed below). In the case of CSIS members on INSETs, it is the understanding of both organizations that such individuals are present in order to provide their expertise and there is no

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[126] RCMP/CSIS MOU, Exhibit 12, Factual Inquiry, Tab 49.

reporting back to CSIS. Similarly, we are informed that there is no reporting back to the RCMP on the part of RCMP members seconded to CSIS.

In addition, different branches of the CID work very closely with CSIS Headquarters personnel on issues such as threat assessments. The RCMP's Anti-Terrorist Financing Group works closely with its counterpart at CSIS and both agencies represent Canada on an International Working Group,[127] the purpose of which is to exchange information and best practices related to terrorist financing and to improve international investigations in this field. CSIS also consults with the RCMP in listing the terrorist groups under the new *Criminal Code* provisions.

CSIS and the RCMP have formed a Joint Management Team that meets regularly to discuss operational and intelligence issues of interest to both agencies.

The government has recently announced the creation of an Integrated Threat Assessment Centre (ITAC) to be housed within CSIS. ITAC's mandate is to create comprehensive analyses of all available information on potential threats to Canada and make those analyses available to all agencies who require them. ITAC is supported by and staffed with representatives of a number of departments and agencies including: the Department of Public Safety and Emergency Preparedness; CSIS; the RCMP; the Communications Security Establishment; the Department of National Defence; the Department of Foreign Affairs; the Privy Council Office; Transport Canada; and the Canadian Border Services Agency. It may also draw upon expertise from other departments and agencies as required.

(b) DFAIT

The former Department of Foreign Affairs and International Trade (DFAIT) has now been split into two separate departments: Foreign Affairs Canada and International Trade Canada.[128] The RCMP had regular interaction with DFAIT and will likely have continuing interaction with both new departments, perhaps more so with Foreign Affairs. The RCMP and DFAIT are parties to a

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[127] The group also includes representatives of the United States, Great Britain, Australia and New Zealand.

[128] These departments will be referred to as DFAIT for the purpose of this paper.

MOU reached in 1988. One of the main objects of this RCMP-DFAIT MOU is to set out the role of RCMP Foreign Liaison Officers posted abroad. The role of such Liaison Officers is to liaise with foreign criminal police agencies and related institutions, in order to provide support and assistance to Canadian law enforcement agencies in the prevention and detection of offences under Canadian federal laws. In the national security context, the policy is for the exchange of information and intelligence with a foreign police agency to flow through the Liaison Officer responsible for the area in which the foreign agency is located. This is generally accomplished without coordination with CSIS. If the information is relevant to the mandate of CSIS, we are informed that the RCMP would seek the foreign police agency's permission before sharing it with CSIS. The Liaison Officer is responsible to ensure that foreign partners understand the difference in the roles of CSIS and the RCMP and must report information and intelligence regarding national security matters to Headquarters.

The MOU provides that the creation of Liaison Officer positions are to be mutually agreed upon by the RCMP and DFAIT. It also gives DFAIT the right to comment on the performance appraisal of the Liaison Officer. There are a total of 35 Liaison Officers in 25 locations: Berlin, London, Madrid, Moscow, Paris, Rome, The Hague, Vienna, Bogata, Caracas, Kingston, Mexico City, Miami, Washington, D.C., Hong Kong, Islamabad, Kuala Lumpur, New Delhi, Beijing, Bangkok. In 2004, five more offices are scheduled: Amman, Brasilia, Rabat, Pretoria and Dubai.

The RCMP/DFAIT MOU also provides for: meetings between senior members of each institution; and that the RCMP will inform DFAIT of proposed visits abroad of RCMP members for operational purposes (except the U.S., unless the meeting might have a bearing on Canada's relations with the U.S.). The RCMP also seconds a member to DFAIT. One of the roles of the RCMP secondee is to facilitate the exchange of information between the two organizations. We are informed that information exchanges come within four categories: Investigations, including updates by the RCMP on ongoing criminal investigations that may have foreign policy implications and provision of information relevant to the RCMP by DFAIT; Protective, including exchange of information regarding the environment abroad in order to ensure the security of official visitors to Canada and to develop security profiles for foreign missions;

Consular, including advice during crisis incidents such as hostage-takings involving Canadians abroad; and General, including information on the smuggling of weapons and nuclear materials.

On occasion, technical security advice and assistance is also provided by each organization to the other.

(c) CSE

The Communications Security Establishment (CSE) is an agency which reports to the Minister of Defence. The CSE has been in existence since 1946 as a creation of Orders in Council, but in 2001 was statutorily continued by the *Anti-terrorism Act*. The focus of the CSE is on foreign intelligence.

The mandate of the CSE is threefold:

(a) to acquire and provide foreign intelligence;

(b) to provide advice, guidance and services to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada; and

(c) to provide technical and operational assistance to federal law enforcement and security agencies.

There are important restrictions on this mandate in that the CSE's activities are not to be directed at Canadians or anyone in Canada. Traditionally this meant that the CSE could not intercept communications which either originated or ended in Canada. However, since 2001, the Minister may authorize the CSE to intercept private communications originating or ending in Canada, as long as they are directed at foreign entities outside Canada, and as long as certain other conditions are met.

The CSE and RCMP interact in a variety of ways. In relation to the first element of the CSE's mandate, the MOU between the RCMP and the CSE allows for the exchange of information that may be beneficial to both organizations and the intelligence community at large. We are

informed that the CSE, in relation to a request from the RCMP, may also request its foreign intelligence partners for information. The CSE may also task its partners to gather intelligence related to such requests. If the intelligence generated from these sources relates to the RCMP's mandate, the CSE may share it with the RCMP. Such sharing occurs at the Headquarters level.

Under the third element of its mandate, CSE provides the RCMP with technical assistance such as obtaining information from an encrypted hard-drive. In order for the CSE to assist, the task must be within the RCMP's authority. Before providing assistance the CSE asks the RCMP for a written attestation that the evidence they are being asked to assist with has been legally obtained.

The third element of the CSE's mandate also allows the CSE to provide the RCMP with operational assistance which, we are informed, may include the interception of electronic communications at the request of the RCMP for the purpose of assisting in a criminal investigation.

We are informed that the CSE provides the RCMP with foreign intelligence relatively infrequently. The intelligence provided is, in most cases, general in nature and provides an overview of a specific situation in another country.

(d) Department of National Defence

The primary mandate of the Department of National Defence (DND) is the defence of Canada. Intelligence activities carried on by the Intelligence Division of the Department abroad or in Canada are in support of this mandate. We are informed that the mission of the Intelligence Division is to provide intelligence services to DND and the Canadian Forces carried out in support of defence planning and military operations and to support other government departments as it relates to the security of Canada. Much of the Division's work relates to foreign intelligence. The DND and the Canadian Armed Forces have the capacity to collect domestic intelligence, but we are informed that they only do so in rare circumstances. There are three units within the Intelligence Division that may be involved in domestic intelligence collection: the National Counter-Intelligence Unit, the Canadian Forces Information Operations Group, and the Canadian Forces Joint Imagery Centre.

The National Counter-Intelligence Unit is primarily responsible for the identification and investigation of security threats to National Defence and the Canadian Forces. It also provides liaison with other security agencies such as CSIS and, on a limited basis, with the RCMP. Investigations can extend beyond DND employees where the security of the Department or the Canadian Forces is involved. It is the practice to hand over the investigation to the relevant lead agency, usually the RCMP or CSIS, if the subject matter of the investigation is someone other than a DND employee.

The Canadian Forces Information Operations Group conducts signals intelligence collection activities in support of the Canadian Forces. The Group is also involved in signals intelligence collection in support of the CSE. In this case, the collection activities are subject to the CSE's mandate and review mechanisms. Pursuant to s. 273.8(2) of the *National Defence Act*, the Minister may authorize the Chief of Defence Staff to intercept private communications in Canada, in certain circumstances related to a possible threat to the DND's computer systems. All of the Canadian Forces Information Operations Group's activities are subject to the laws of Canada, in particular the *Criminal Code* and the *Privacy Act*.

The Canadian Forces Joint Imagery Centre may under certain circumstances co-ordinate the collection of images of areas of Canada to support the domestic and international operations of the Canadian Forces. There are express limitations on the role of National Defence and the Canadian Forces in collecting imagery intelligence on Canadian individuals and groups within Canada.

The Joint Task Force Two (JTF 2) of the Canadian Forces is a Special Operations Force that is responsible for federal counter-terrorist operations. The mission of JTF 2 is to provide a force capable of rendering armed assistance in the resolution of an incident that is affecting, or has the potential to affect, the national interest. The JTF 2 falls under the responsibility of the Deputy Chief of the Defence Staff.

We are informed that interaction between the RCMP and the DND Intelligence Division is 'extremely limited' and only on a case by case basis.

(e) Citizenship and Immigration Canada

The RCMP interacts with both CIC and the Canadian Border Services Agency (CBSA). The role of CBSA is focussed on the enforcement and investigatory side of immigration matters and the RCMP's interaction with CBSA is in relation to that role. In addition to IIETs, which were discussed above, we are informed that there is also regular contact at the Headquarters level between the RCMP and the CBSA. The CIC remained responsible for the Immigration process, including the Immigration and Refugee Appeal Boards. We are informed that the RCMP works with CIC on many fronts including the investigation of fraudulent information given in support of citizenship of permanent residence status, investigation of malfeasance at missions abroad, war crimes investigations, and the protection of foreign witnesses in Canada. We will continue to research the details of such exchanges with both the CBSA and the CIC.

(f) FINTRAC

As set out above, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) was created pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. FINTRAC is authorized to gather information and detect financial transactions that may constitute threats to the security of Canada. FINTRAC is also authorized to disclose information to the appropriate police force, including the RCMP, if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence. Information that can be disclosed includes names, addresses, amounts and account numbers.[129] FINTRAC must record in writing the reason for disclosing information.

(g) Municipal and Provincial Police Forces

The RCMP has regular interactions with many municipal and provincial police services across Canada on matters related to national security. This includes interactions in the context of integrated teams such as INSETs, but also less structured interaction arising out of the national security mandates of local police services.

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[129] Information is shared through a two-tiered process: An initial written report is provided by FINTRAC as prescribed by law (*Proceeds of Crime Money Laundering and Terrorist Financing Act*); full disclosure is then made pursuant to a court order. The information disclosed is entered onto SCIS.

While primary responsibility for national security criminal activities rests with the RCMP, matters related to national security cross into the mandates of municipal and provincial police services on a regular basis. If, for example, a terrorist group targets the CN Tower, the Toronto Police Service would be involved pursuant to its mandate to protect the people of Toronto and to enforce the *Criminal Code* in Toronto. Municipal and provincial services are also involved in such matters as protecting VIPs and Internationally Protected Persons (as defined in the *Security Offences Act*) when such individuals are within their geographic jurisdictions. Some agencies, such as the OPP, have their own terrorism units.

In many cases the relationships between the RCMP and municipal and provincial police services are governed by MOUs. From our discussions with representatives of municipal and provincial police forces, there appears to be an acceptance that national security matters are primarily the mandate of CSIS and the RCMP. They interpret their roles as supportive of this mandate. In this regard they provide assistance in investigations and protective actions. They also pass on information of a national security nature which may be obtained through their own investigations.

While municipal and provincial police services do not have access to SCIS, relevant information is provided to them by the RCMP and by CSIS in order to allow them to deal with local situations. This includes threat assessments and information relevant to local investigations. Much of the information that comes from the RCMP or CSIS is unclassified. However, increasingly, senior members of these services are obtaining Top Secret Security Clearance, so that classified information can be shared as well. Municipal and provincial forces have had to adjust by creating mechanisms to "wall-off" classified information from other members of the force.

(h) U.S. Agencies and other Foreign Agencies

The RCMP has extensive interaction with foreign law enforcement agencies, particularly those in the U.S. This interaction has increased since the events of 9/11. The RCMP also interacts with foreign security intelligence agencies but, given that CSIS is the prime contact for such relationships, these contacts are less frequent. As noted above, interactions between the RCMP

and foreign security intelligence agencies are subject to the terms of a Ministerial Directive issued in November 2003. We are informed that if the RCMP has contact with a foreign intelligence agency, then CSIS would be advised of such contact[130].

As noted in the section dealing with the dissemination of information above, there are few MOUs or other written agreements which govern the relationship between the RCMP and foreign agencies.

It is important to note that there are a number of international conventions, to which Canada is a party, that call for sharing of information related to terrorism. For example, UN Security Council Resolution 1371 (2001) calls upon all states to:

- find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks, forged or falsified travel documents; traffic in arms, explosives or sensitive materials, use of communications technologies by terrorist groups and the threat posed by the possession of weapons of mass destruction by terrorist groups;

- exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts; and

- cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

Other international conventions such as the UN Convention against Transnational Organized Crime and the International Convention for Suppression of Terrorist Bombings, and treaties such

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[130] It can be argued that, pursuant to the November 2003 Directive, the Solicitor General should be informed of such contact as well. We are informed by the RCMP that the Directive applies only to written and oral arrangements and not to every exchange of information.

as the International Convention for the Suppression of Financing of Terrorism also require cooperation and information sharing by law enforcement agencies.

As noted in the previous section, such relationships are rarely governed by other agreements. The understandings and protocols underlying the exchange of information was discussed in the previous subsection.

The RCMP may also carry out joint investigations with foreign police services. Such investigations are created when an investigation has cross-border implications. While each police force is restricted to matters within its jurisdiction, they involve joint planning, execution and sharing of information. In the context of joint investigations, RCMP officers may request another police force to interview a witness or an officer may travel to another country to participate in an interview.

(vi) Accountability Mechanisms

A number of internal and external accountability mechanisms exist in respect of the RCMP's mandate in general, including its national security mandate. These accountability mechanisms provide an opportunity for assessment of the conduct of the RCMP on the basis of powers, prohibitions, rules and guidelines that have been set out in the *Charter*, legislation and internal RCMP polices and codes of conduct. Many of the legislative provisions, rules and guidelines relevant to national security activities have already been discussed in this paper.[131] These include the *Charter*, the *Criminal Code*, the *Security Offences Act* and the *Privacy Act*. RCMP members are also subject to the rule of law, which means that they are not above the law, and are subject to the same laws as all Canadians.[132]

Another important legislative source is the *RCMP Act*, which has also been discussed above. For present purposes it is noteworthy that section 18 of the Act sets out a list of law enforcement

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[131] See for example the discussion of the limits imposed by the *Charter* and the *Privacy Act* in connection with the dissemination of information.

[132] However, the RCMP has the power in some circumstances to commit some acts not otherwise authorized by law. See the *Act to amend the Criminal Code (Organized Crime and Law Enforcement)*, S.C. 2001, c. 32, and the background paper entitled "Statutory Framework of the RCMP's National Security Activities".

responsibilities, and provides that any further duties must be prescribed by the Governor in Council or by the Commissioner of the RCMP. It also prescribes standards of conduct for RCMP members. For example, according to section 37 of the Act, RCMP members must "respect the rights of all persons", "maintain the integrity of the law, law enforcement and the administration of justice", and "perform (their) duties promptly, impartially and diligently, in accordance with the law and without abusing (their) authority".[133] According to the RCMP Code of Conduct, which is prescribed by regulation, RCMP members must obey lawful orders, assist a person who is in impending danger, refrain from destroying or concealing official documents, and respect the rights of every person including the right to freedom from discrimination.[134]

Another internal form of accountability is the centralized nature of most of the RCMP's work on national security. A November 2003 Ministerial Directive requires that investigations with respect to terrorism offences and other offences involving threats to national security "be centrally coordinated at RCMP headquarters" in part to "enhance the Commissioner's operational accountability".

External accountability mechanisms to which the RCMP is subject include the RCMP's External Review Committee, the Commission for Public Complaints Against the RCMP, the Auditor General, Parliament as well as civil institutions such as the media and non-governmental advisory organizations. These are discussed in greater detail in the background papers entitled "Police Review Models" and "Intelligence Review Models".

The judiciary is another external accountability mechanism for the RCMP and its role has been discussed above. As noted there, judicial review represents an important accountability mechanism in regard to matters that make it to court. In such matters the courts have the opportunity to review the conduct of the RCMP and asses it against the requirements of the

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133 See section 37 of the *Act* for the other standards of conduct listed therein.

134 See the RCMP Code of Conduct for the other standards of conduct listed therein: *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361.

Charter and applicable legislation including the *Criminal Code*, the *Privacy Act* and human rights legislation.

There are also a number of internal accountability mechanisms in place. First, the activities of the RCMP are subject to review by senior officers of the Force. In addition the Adjudications Branch of the RCMP provides two types of adjudication: Adjudication Boards appointed under Part IV of the *RCMP Act* for the purpose of formal disciplinary hearings; and Discharge and Demotion Boards appointed under Part V of the *Act*. Both boards consist of three officers, one with legal training.

The Audit and Evaluation branch performs another internal accountability function. It provides risk management services with respect to internal controls, activities and culture. Its mandate includes ensuring compliance with laws, regulations and internal policies.

The Commissioner of the RCMP or the Solicitor General are also empowered under the *RCMP Act*[135] to appoint a Board of Inquiry to investigate and report on a broad range of matters including conduct and performance of duties. Such Boards of Inquiry are given broad powers to summons individuals and receive evidence under oath.

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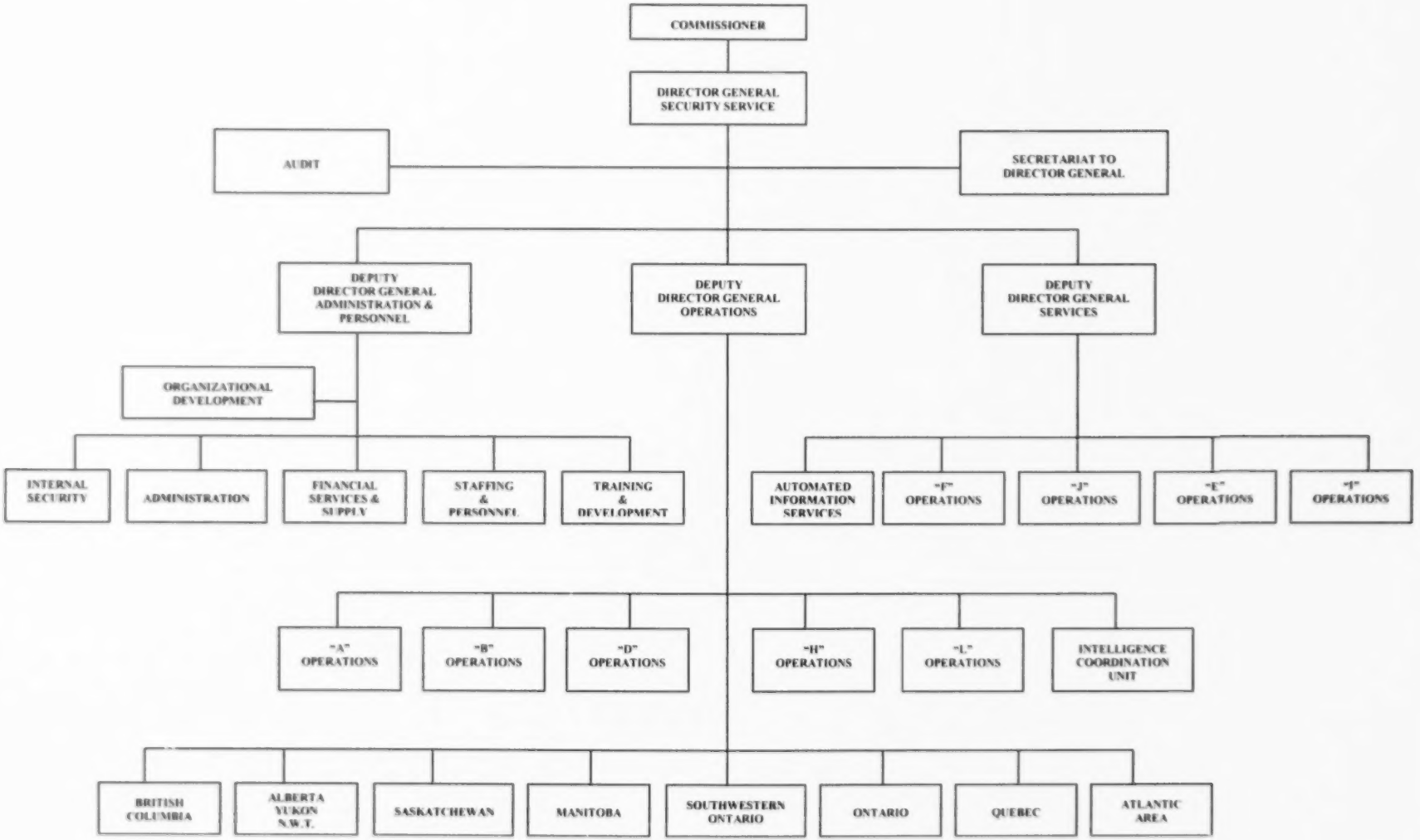
[135] *RCMP Act*, s. 24.

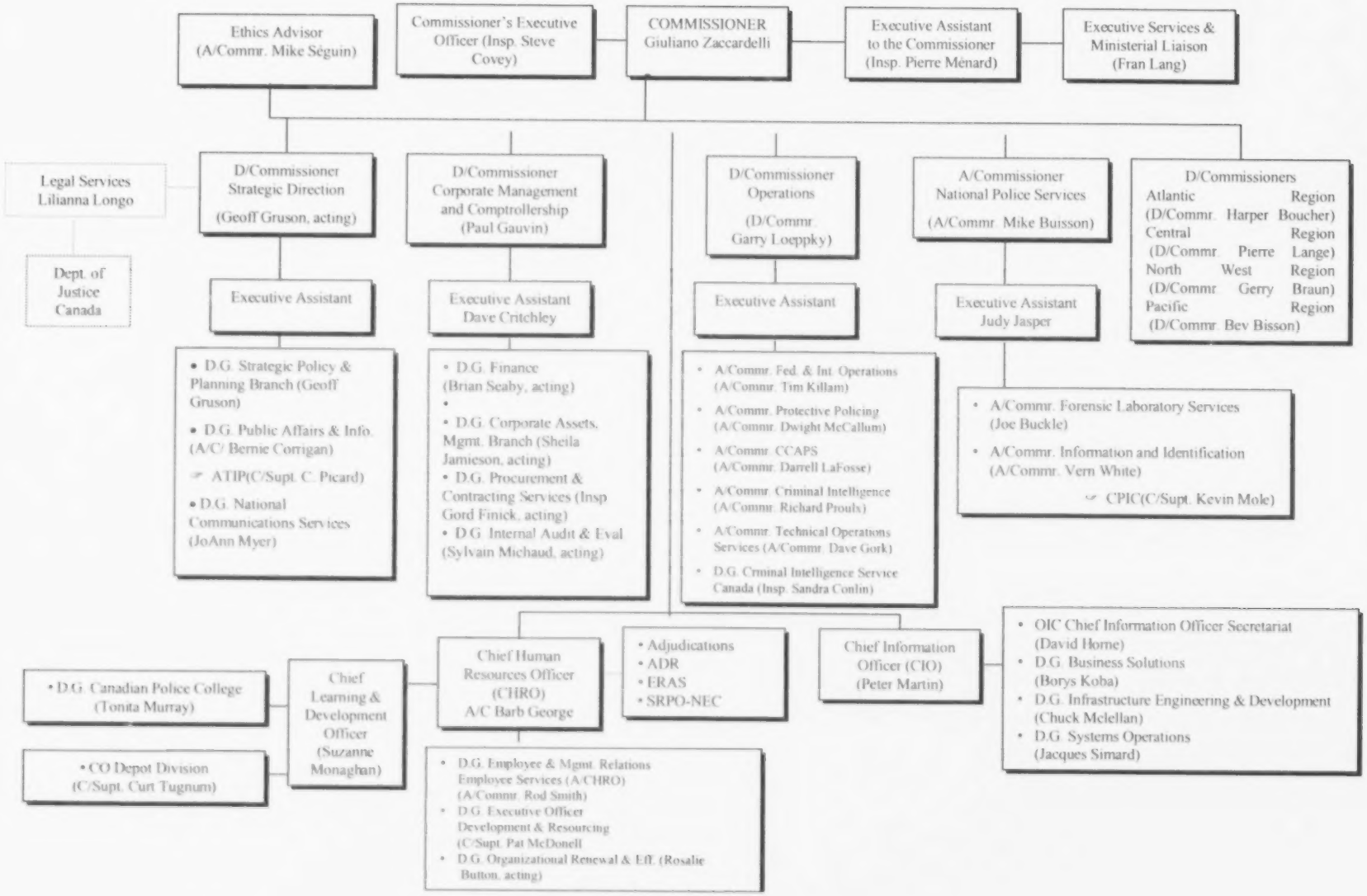
APPENDIX A
ORGANIZATION of the RCMP SECURITY SERVICE (1981)



APPENDIX B

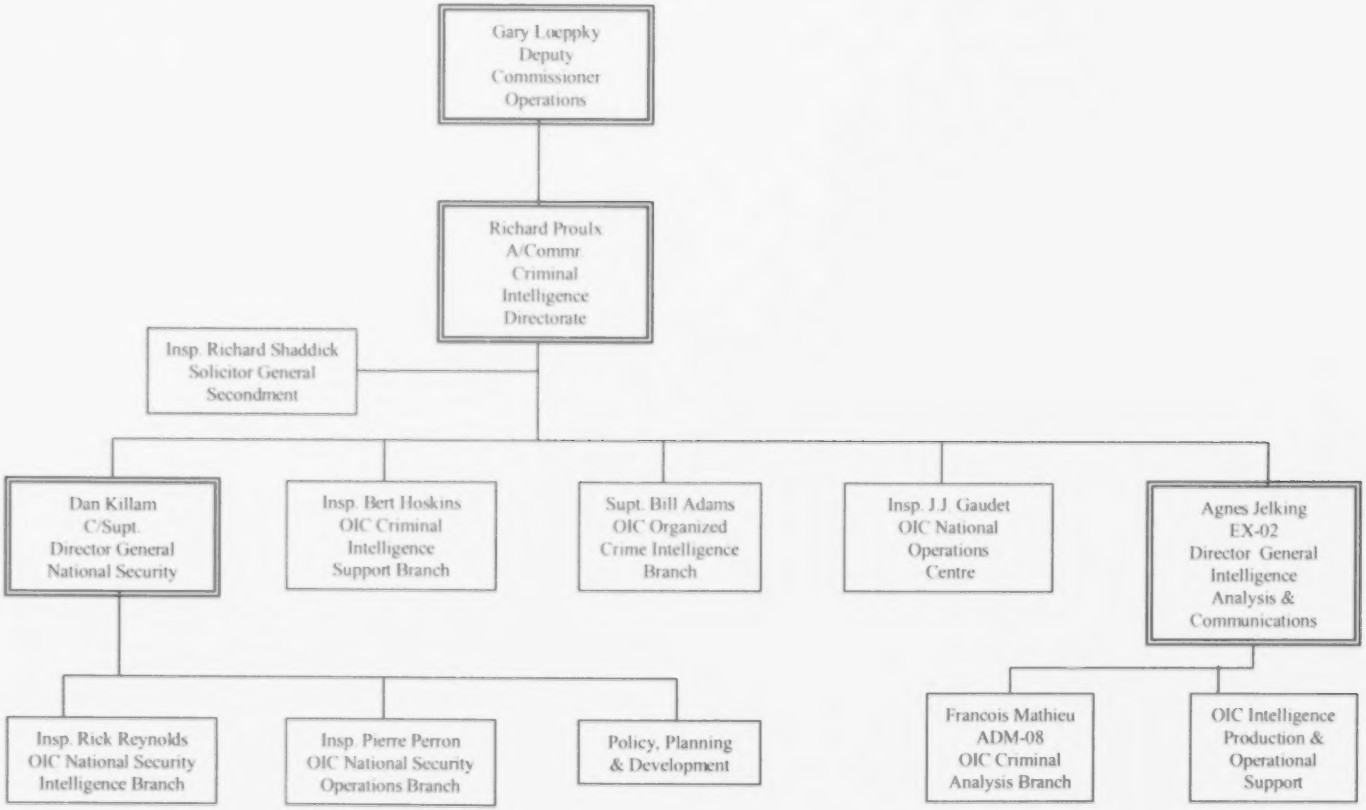
HEADQUARTERS ORGANIZATION

A/C = Assistant Commissioner
D/C = Deputy Commissioner


Ethics Advisor (A/Commr. Mike Séguin)
Commissioner's Executive Officer (Insp. Steve Covey)
COMMISSIONER Giuliano Zaccardelli
Executive Assistant to the Commissioner (Insp. Pierre Ménard)
Executive Services & Ministerial Liaison (Fran Lang)
Legal Services Lilianna Longo
Dept. of Justice Canada
D/Commissioner Strategic Direction (Geoff Gruson, acting)
D/Commissioner Corporate Management and Comptrollership (Paul Gauvin)
D/Commissioner Operations (D/Commr. Garry Loeppky)
A/Commissioner National Police Services (A/Commr. Mike Buisson)
D/Commissioners
Atlantic Region (D/Commr. Harper Boucher)
Central Region (D/Commr. Pierre Lange)
North West Region (D/Commr. Gerry Braun)
Pacific Region (D/Commr. Bev Bisson)
Executive Assistant
Executive Assistant Dave Critchley
Executive Assistant
Executive Assistant Judy Jasper
• D.G. Strategic Policy & Planning Branch (Geoff Gruson)
• D.G. Public Affairs & Info. (A/C/ Bernie Corrigan)
☞ ATIP(C/Supt. C. Picard)
• D.G. National Communications Services (JoAnn Myer)
• D.G. Finance (Brian Seaby, acting)
• D.G. Corporate Assets, Mgmt. Branch (Sheila Jamieson, acting)
• D.G. Procurement & Contracting Services (Insp Gord Finick, acting)
• D.G. Internal Audit & Eval (Sylvain Michaud, acting)
• A/Commr. Fed. & Int. Operations (A/Commr. Tim Killam)
• A/Commr. Protective Policing (A/Commr. Dwight McCallum)
• A/Commr. CCAPS (A/Commr. Darrell LaFosse)
• A/Commr. Criminal Intelligence (A/Commr. Richard Proulx)
• A/Commr. Technical Operations Services (A/Commr. Dave Gork)
• D.G. Criminal Intelligence Service Canada (Insp. Sandra Conlin)
• A/Commr. Forensic Laboratory Services (Joe Buckle)
• A/Commr. Information and Identification (A/Commr. Vern White)
☞ CPIC(C/Supt. Kevin Mole)
• D.G. Canadian Police College (Tonita Murray)
• CO Depot Division (C/Supt. Curt Tugnum)
Chief Learning & Development Officer (Suzanne Monaghan)
Chief Human Resources Officer (CHRO) A/C Barb George
• Adjudications
• ADR
• ERAS
• SRPO-NEC
Chief Information Officer (CIO) (Peter Martin)
• OIC Chief Information Officer Secretariat (David Horne)
• D.G. Business Solutions (Borys Koba)
• D.G. Infrastructure Engineering & Development (Chuck Mclellan)
• D.G. Systems Operations (Jacques Simard)
• D.G. Employee & Mgmt. Relations Employee Services (A/CHRO) (A/Commr. Rod Smith)
• D.G. Executive Officer Development & Resourcing (C/Supt. Pat McDonell
• D.G. Organizational Renewal & Eff. (Rosalie Button, acting)

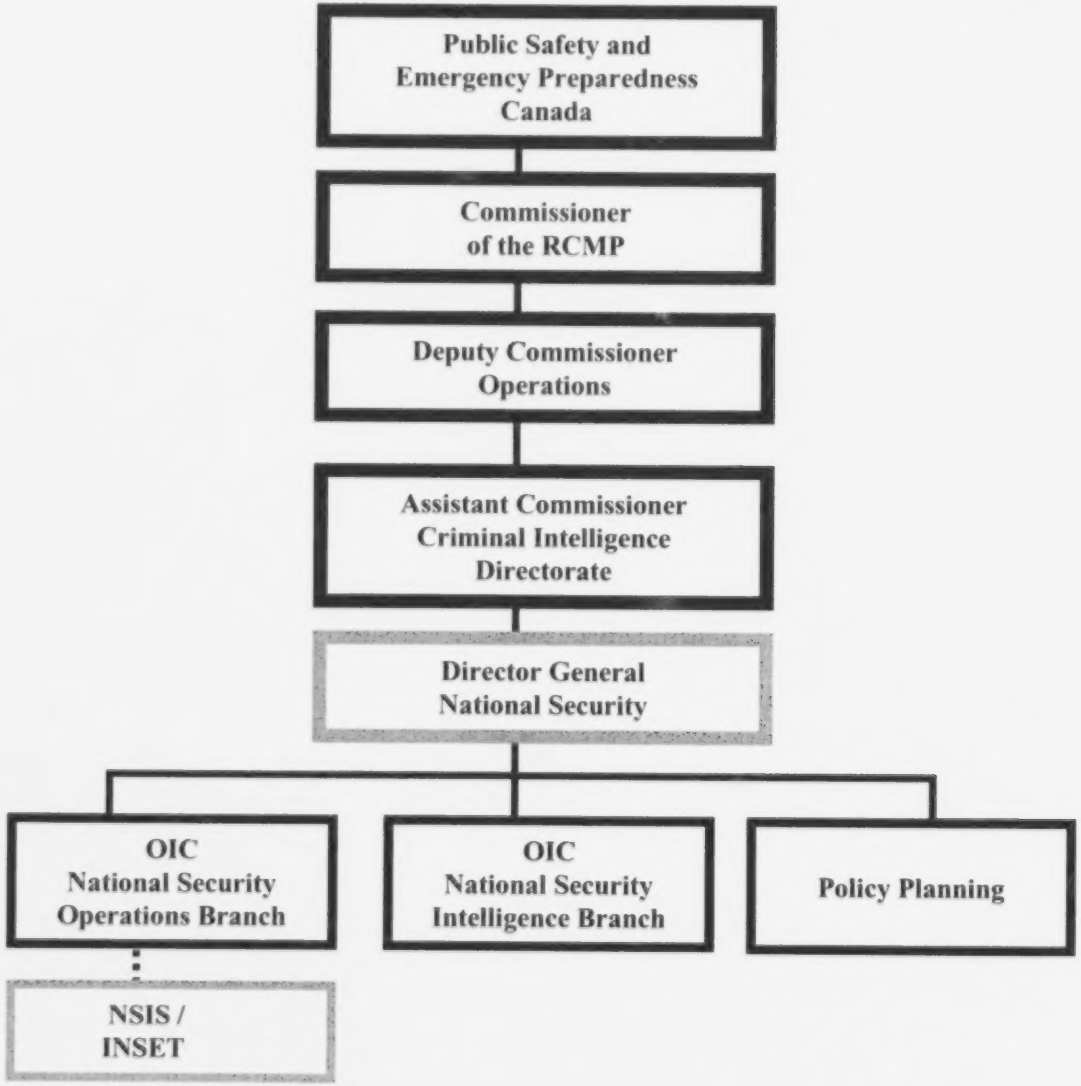
APPENDIX C

ORGANIZATIONAL STRUCTURE - CID



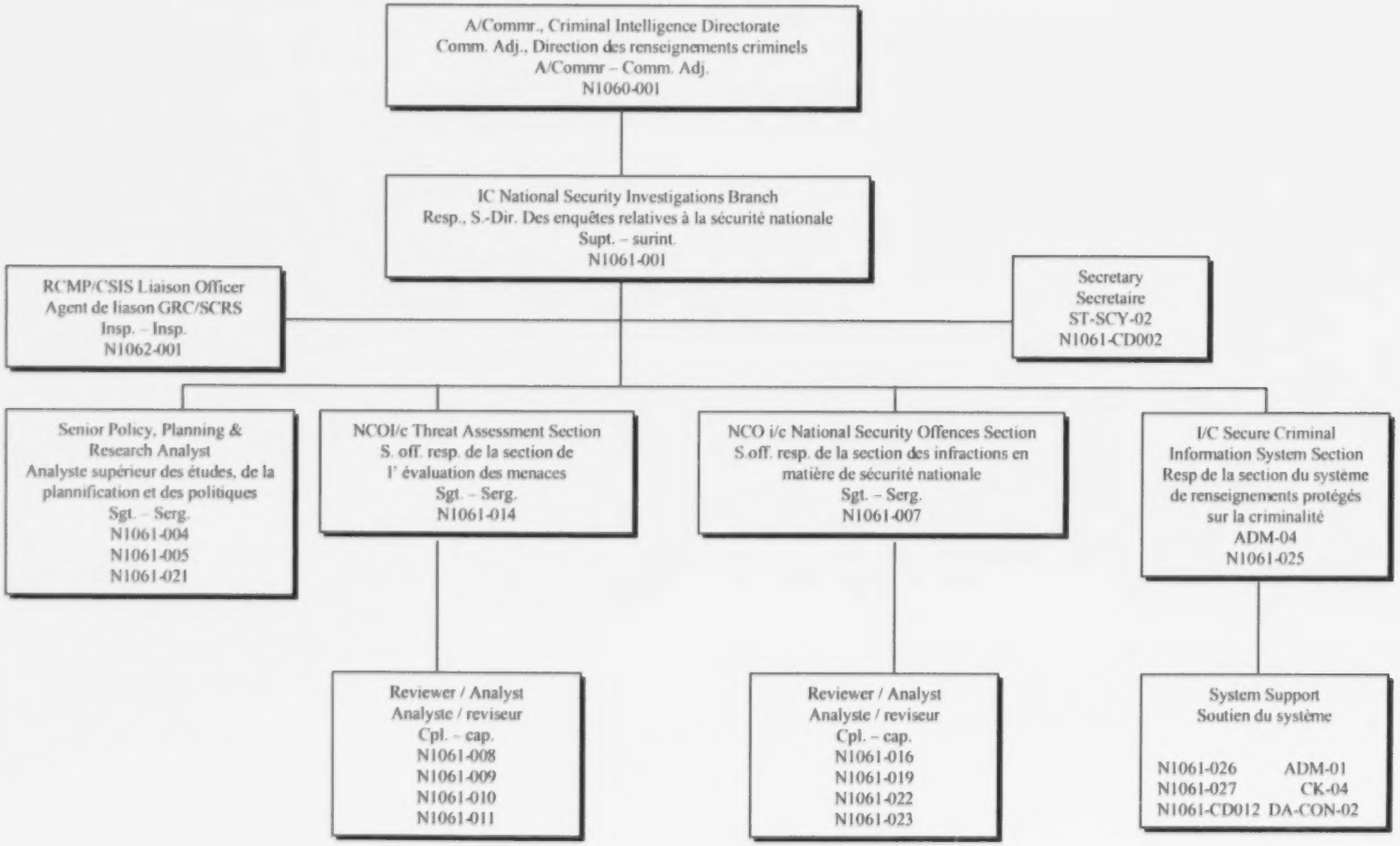
APPENDIX D
NSIS/INSETS REPORTING STRUCTURE

POST 9-11 (April 2003)


Public Safety and Emergency Preparedness Canada
Commissioner of the RCMP
Deputy Commissioner Operations
Assistant Commissioner Criminal Intelligence Directorate
Director General National Security
OIC National Security Operations Branch
OIC National Security Intelligence Branch
Policy Planning
NSIS / INSET

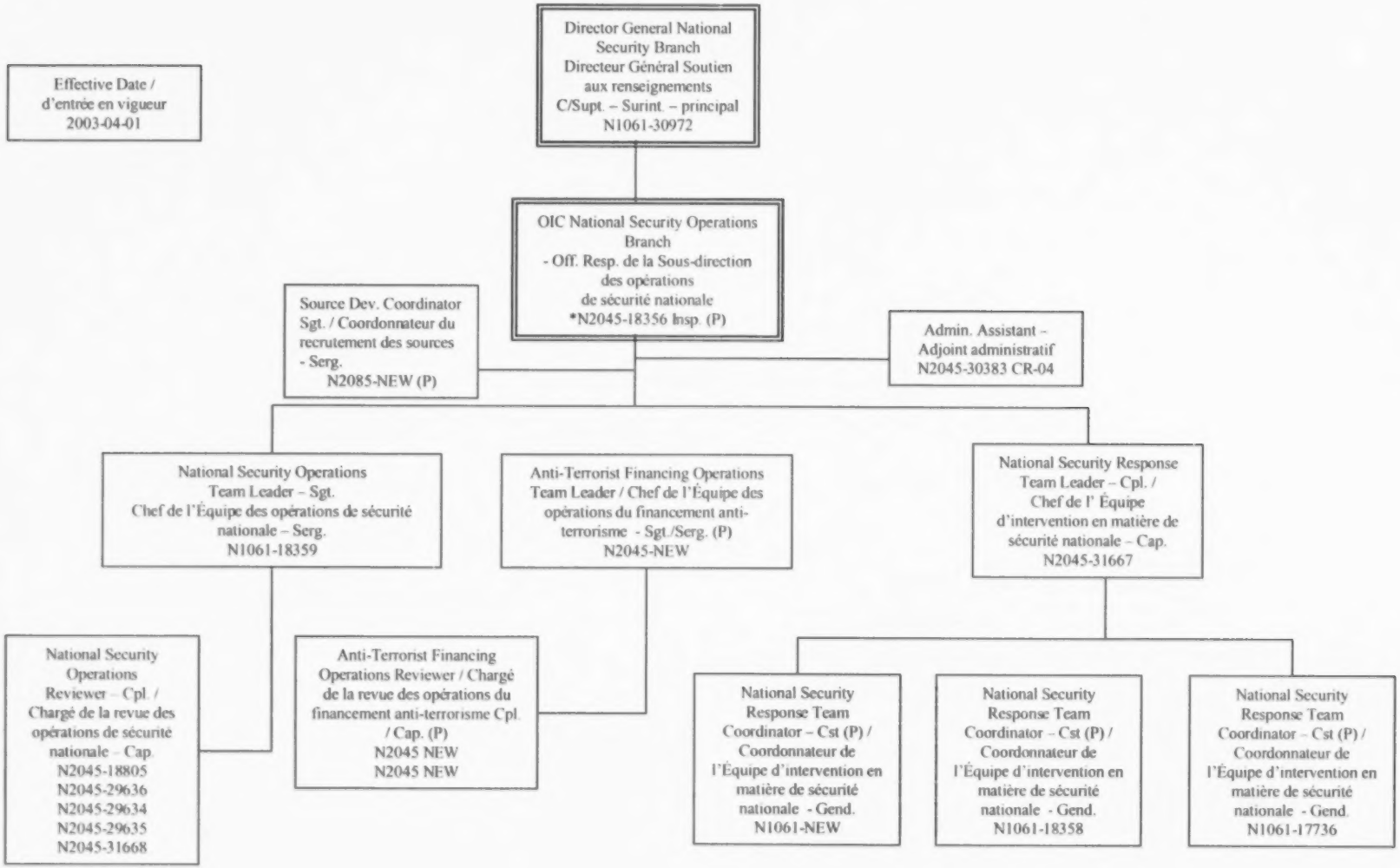
APPENDIX E

NATIONAL SECURITY INVESTIGATIONS BRANCH
S.-DIR DES ENQUÊTES RELATIVES À LA SÉCURITÉ NATIONALE



APPENDIX F

NATIONAL SECURITY OPERATIONS BRANCH


Effective Date / d'entrée en vigueur 2003-04-01
Director General National Security Branch Directeur Général Soutien aux renseignements C/Supt. – Surint. – principal N1061-30972
OIC National Security Operations Branch - Off. Resp. de la Sous-direction des opérations de sécurité nationale *N2045-18356 Insp. (P)
Source Dev. Coordinator Sgt. / Coordonnateur du recrutement des sources - Serg. N2085-NEW (P)
Admin. Assistant – Adjoint administratif N2045-30383 CR-04
National Security Operations Team Leader – Sgt. Chef de l'Équipe des opérations de sécurité nationale – Serg. N1061-18359
Anti-Terrorist Financing Operations Team Leader / Chef de l'Équipe des opérations du financement anti-terrorisme - Sgt./Serg. (P) N2045-NEW
National Security Response Team Leader – Cpl. / Chef de l' Équipe d'intervention en matière de sécurité nationale – Cap. N2045-31667
National Security Operations Reviewer – Cpl. / Chargé de la revue des opérations de sécurité nationale – Cap. N2045-18805 N2045-29636 N2045-29634 N2045-29635 N2045-31668
Anti-Terrorist Financing Operations Reviewer / Chargé de la revue des opérations du financement anti-terrorisme Cpl. / Cap. (P) N2045 NEW N2045 NEW
National Security Response Team Coordinator – Cst (P) / Coordonnateur de l'Équipe d'intervention en matière de sécurité nationale - Gend. N1061-NEW
National Security Response Team Coordinator – Cst (P) / Coordonnateur de l'Équipe d'intervention en matière de sécurité nationale - Gend. N1061-18358
National Security Response Team Coordinator – Cst (P) / Coordonnateur de l'Équipe d'intervention en matière de sécurité nationale - Gend. N1061-17736

Commission of Inquiry
into the Actions of Canadian Officials in Relation to Maher Arar

Policy Review

The RCMP and National Security: Supplementary Background Paper

June 2005

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	IBET	11
	IIET	13
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Schedule B		

* For ease of reference, the headings in this paper correspond to those used in the RCMP and National Security Background Paper published on December 10, 2004. A full list of these headings can be found at Schedule A.

** In the RCMP and National Security Background Paper published on December 10, 2004, the National Security Investigations Branch was referred to in some places as the National Security Intelligence Branch. It should have been, in all cases, the National Security Investigations Branch (NSIB).

*** There is an acronym list at Schedule B.

The Arar Commission's original RCMP and National Security Background Paper set out a history of the RCMP's national security activities and a description of the Force's current structure and activities in relation to its national security mandate.[1] Since the RCMP Paper was published, the Commission has undertaken further research on the national security activities of the RCMP, including site visits to RCMP National Headquarters and various field offices as a result of which we have obtained significant additional information. We believe it is useful to set out some of this information in a Supplementary Paper. For ease of reference the headings in this paper correspond to those of the RCMP Paper, the index of which is included as Schedule A hereto.

B.(ii)(a) Organizational Overview

As noted in the RCMP Paper, the organization of the RCMP's national security activities has undergone significant change since September 11, 2001. Further changes have occurred since the RCMP Paper was published. For example, the Threat Assessment Section, originally part of the NSIB, has been made a separate branch that reports directly to the Director General – National Security. There are now three branches that report to the Director General: the NSIB, NSOB and the Threat Assessment Branch. The functions of the Threat Assessment Branch have not changed materially from what is set out at pages 46-47 of the RCMP Paper.[2]

B.(ii)(a)(1) National Security Investigations Branch

As noted in the RCMP Paper, the focus of the NSIB is to collect and analyze intelligence and to develop potential strategic and tactical approaches to natio nal security investigations. The other major group reporting to the Director General – National Security – the NSOB – is focussed on the coordination of such investigations. The NSOB is discussed in greater detail below.

One of the major functions of the NSIB is the production of Tactical Analytical Products (TAPs). TAPs are intelligence products which make the case for the commencement of criminal

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1 That Paper was published on December 10, 2004 and is referred to herein as the "RCMP Paper".

2 Given the evolving nature of the RCMP's national security function, there will undoubtedly be further changes to the Force's structure by the time any Policy Review recommendations are made. It will, therefore, be important that any recommendations made take into account a potentially fluid organizational structure.

investigations (by INSETs and NSISs). We are informed that TAPs generally contain an executive summary and identification of the criminality implicated in the matter, as well as details of all of the intelligence behind the executive summary.

The process involved in creating TAPs, begins with review and analysis of information coming into NSIB from a variety of sources. These sources include: CSIS[3]; Canada's allies; other police forces; other intelligence agencies; other domestic government departments and agencies[4]; and the community. This information is analysed and prioritised in a manner consistent with the priorities set by CrOps officers at the annual tactical priorities meeting. Prioritization is also informed by discussions with CSIS.

In addition to information from external sources, NSIB also relies on RCMP-generated information in preparing TAPs. On occasion, NSIB will task INSETs or NSISs to assist with the preparation of TAPs. Information, in addition to that provided without request, will also be requested from domestic and foreign agencies. For example, we are informed that in the past the RCMP has tasked the CSE by identifying individuals overseas on whom more information is required.

Once a TAP is complete, it is either shelved or a decision is made to proceed with a tactical project. In the latter case, the file is delivered to the NSOB for coordination and oversight of any investigation. We are informed that the complexity and scope of a TAP determines who, within the RCMP, is responsible for authorizing release of the TAP to the field. In cases where that TAP is extensive and will likely require significant investment of resources to investigate, a presentation of the TAP will be made to the Director General National Security, and in some cases the Assistant Commissioner CID, whose authority is required to approve release to the appropriate Divisions for investigation. In the case of such TAPs, the transfer of the package to a field unit also entails holding a meeting with all implicated units including the Division Criminal Operations Branch and the INSET/NSIS commander. In instances where the TAP is not complex and does not appear to be resource-intensive, the TAP will be forwarded for follow-up investigation to a Division with the approval of the Officer in Charge (OIC) NSIB. We are also

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[3] CSIS is responsible for approximately 30% of the information coming into NSIS.

[4] Including the CSE, DND, CIC, FINTRAC, FAC, DOJ and CBSA.

informed that in the majority of cases, the TAP or portions of it are shared with CSIS, as they are partners in the development of the TAPs.

In addition to the production of TAPs, NSIB is also involved in the day-to-day flow of national security information within the RCMP. A significant portion of national security information comes into the RCMP through NSIB. While this information may be used in the production of TAPs, it is also necessary for a significant portion to be directed to the field, even before any TAP is produced. NSIB is the primary contact within the RCMP for intelligence agencies with information to pass on.

A third area of responsibility for NSIB is answering requests for information from entities outside the RCMP. Requests from intelligence agencies and other government departments, both domestic and foreign, are directed to NSIB. Requests from police agencies are generally directed through NSOB. We are informed that, with the exception of CSIS and CSE, only a limited amount of information and intelligence is provided by NSIB to non-police agencies. This information flow to other non-police agencies is limited largely because of the *Privacy Act* requirement that police agencies such as the RCMP are generally only free to disclose information under the consistent-use disclosure and law-enforcement disclosure exceptions under the *Act*.

The final main area of responsibility for NSIB is the briefing of senior members of the Force on issues related to national security.[5]

B.(ii)(a)(2) National Security Operations Branch

The primary focus of the NSOB is the coordination of national security investigations across Canada. It has the responsibility to provide Headquarters' approval of all national security investigations undertaken by INSETs and NSIS.[6] This includes an intake responsibility in

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[5] There are two additional points worth noting that arose from our NSIB interviews: (i) the Anti-Terrorist Financing Group located within NSIB is the main entry point for information coming from FINTRAC; (ii) the major focus of the Critical Infrastructure Intelligence Section (also within NSIB), is potential hacking into critical computer systems and databases.

[6] INSETs, as set out in detail in the RCMP Paper, are integrated teams that carry out national security investigations. INSETs are located in Vancouver, Toronto, Ottawa and Montreal. RCMP Divisions which do not have INSETs have National Security Investigation Sections (NSIS) which carry out the

respect of work originating from NSIB and from other sources both internal and external to the RCMP. Work comes into the NSOB in a variety of ways. We are informed that the TAPs produced by NSIB, discussed in the previous section, represent the genesis of approximately 10% of the files which NSOB oversees. Other files are commenced as a result of information coming in from other sources both within and outside the RCMP.

When information comes into NSOB, it is initially assessed by either the OIC or the Operations NCO. They first determine whether or not the information involves criminality or potential criminality. If no criminality or potential criminality is apparent, the matter may be referred to CSIS. There are matters where criminality may be expected at the outset, but further investigation leads to the conclusion that there is no criminality. We are informed that in these circumstances the investigation stops and the information obtained may be handed over to CSIS. We are further informed that such information nevertheless remains on the SCIS database until it is deleted in the normal course. The second issue decided at the outset is whether the information relates to national security. Again, this is not always a permanent determination. As discussed in the RCMP Paper, national security crimes overlap with many other forms of criminal behaviour. We are informed that if there is a deemed national security link, a file is treated as a national security file and all national security policies and procedures apply, even if the investigation is being conducted by officers outside of an INSET or NSIS. If it is ultimately determined that there is no deemed national security link, the investigation is stopped or handed over/back to another area within the RCMP or another police agency. We are informed that a determination of what is or is not national security is guided by the *Security Offences Act* and the *Criminal Code*.

If the OIC or the Operations NCO decides to open an investigation on the basis of information received, that file is assigned to a reviewer within the NSOB. The reviewers play a pivotal role within NSOB. At the time we met with NSOB, there were a total of twelve reviewers and the goal was to have twenty. The reviewer is the Headquarters' coordinator of the national security investigations in his/her portfolio. We are informed that unless an investigation is open and shut[7], virtually all national security investigations handled by the RCMP are assigned an NSOB

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same function, but are not integrated with other police agencies or government departments. See further discussion below.

7 i.e. an investigation that lasts a very short time.

reviewer. The reviewer's job includes: coordinating the flow of information between Headquarters and the field officers assigned to the matter; finding specialized resources within the RCMP to support the file; interacting with domestic and foreign police agencies[8]; interacting with CSIS; interacting with RCMP liaison officers abroad; and ensuring that RCMP policies and procedures, including national security policies and procedures, are followed. Part of the role is also to make sure that all RCMP investigations with a deemed national security nexus (ie. even those that originate or continue to be investigated outside of INSETs or NSISs) are coordinated through Headquarters.

The NSOB is also responsible for oversight of information sharing with domestic police agencies. We are informed that while exchanges of information can happen at the field level, especially in cases where RCMP personnel are co-located with other police agency personnel,[9] when this is done, NSOB is to be kept advised of all such exchanges. We are further informed that in such cases the INSET officer in charge is responsible for approval of information exchanges. We are informed that because of their interaction with RCMP Liaison Officers abroad, NSOB has also been involved in sharing information with foreign police agencies through the Liaison Officer. We are informed that the approval for such information exchanges goes through NSOB. As noted above, cases of information exchanges with foreign intelligence agencies are approved by NSIB.

B.(iii)(a)(4) National Security Investigation Sections, Integrated National Security Enforcement Teams, and other Integrated Teams

Commission staff visited and met with personnel from O-INSET, the Toronto IBET and the Windsor IIET.

O-INSET

O-INSET is located in suburban Toronto and has jurisdiction across Ontario with the exception of the National Capital Region. As noted in the RCMP Paper, in addition to RCMP members,

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8 As noted below, in the case of domestic police agencies, information sharing is often direct, at least as between INSETs and the domestic police agency.

9 As discussed elsewhere in the RCMP Paper and this Supplementary Paper, RCMP national security personnel often share office premises with other national security actors. See discussion in relation to INSETs, IBETs and IIETs.

members of other agencies are seconded to INSET. In the case of O-INSET these include (or have included) the Ontario Provincial Police, Toronto Police Service, York Regional Police, Durham Regional Police, Peel Regional Police, CSIS and CBSA. As of August 2004, O-INSET included 53 regular RCMP members, two RCMP civilian members and 22 secondees from other agencies and RCMP units.[10] In addition, both the Ontario Provincial Anti-Terrorism Section (PATS) and representatives of the Attorney General for Canada and the Attorney General of Ontario are co-located within O-INSET. The O-INSET is also co-located with the Combined Forces Special Enforcement Unit (CFSEU) the mandate of which centers around organized crime. This co-location facilitates communication between the two entities. We are informed that if a national security emergency, such as 9/11, were to occur with the result that significant additional personnel are required to fulfill the RCMP's national security role, CFSEU is a likely source of such personnel. It is anticipated that the increased communication arising from co-location would make the transition run more smoothly than if personnel who had no knowledge whatsoever of the operations of INSET were deployed.

As noted in the RCMP Paper, the focus of INSETs is on the investigation of national security crimes. In the most recent calendar year, there were approximately 1,174 new files opened by O-INSET.[11] In addition, there were 12 major projects and 9 mini-crises. Projects are major investigations reflecting the RCMP's national tactical priorities as determined by the CrOps officers. Mini-crises are short term emergencies. O-INSET cited the threat to bomb an El Al flight destined for Toronto in 2003 as an example of a mini-crisis.

The O-INSET has a centralized input coordination function. We are informed that all external tasking comes through the O-INSET Intake Officer (IO). As is the case with intake at NSOB, two initial determinations are made by the IO: first, whether there is a sufficient national security nexus; and second, whether there is a sufficient criminal nexus. Tasks that do not meet these

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[10] We were informed that the term "secondee" may not be appropriate in the circumstances of most individuals assigned to INSET from other agencies. Those personnel from partner agencies who are intended to remain in INSET for a longer period of time have actually been "transferred" to INSET. Such transfers are generally for a period of three to five years. These personnel are considered to be INSET "assets". It is, however, our understanding that while "transferred" personnel report up through the INSET chain of command, they are most often paid by their home agencies and are subject to the disciplinary requirements of those home agencies. In addition, the INSET partner agencies also provide short-term personnel to INSET on a one-off, as-needed basis. O-INSET preferred to refer to only this latter type of personnel as "seconded".

[11] In 2003 1,123 new files were opened.

criteria are rejected, or sometimes in the case of an insufficient criminal nexus, are sent directly by the IO to CSIS.

A large volume of external tasking comes to O-INSET through the NSOB. As such, a significant amount of screening for the above noted criteria will have been completed before the matter arrives at O-INSET. Such tasking includes requests for assistance from foreign agencies. We are informed by the RCMP that all requests for assistance from foreign agencies (even those that can be classified as "life and death") must go through RCMP National Headquarters. When a foreign agency contacts INSET directly, we are advised that they are referred to RCMP National Headquarters.

Information which may lead to the commencement of a national security investigation may also come to the IO from other domestic police agencies. In this case as well, the IO makes the decision about whether the INSET will take on the work. In such cases, NSOB will be notified of the matter as soon as a file is generated. If only a discreet piece of information is passed to the INSET which does not involve further investigation by the INSET, or if any such investigation is minimal, NSOB may be notified by the uploading of the information to SCIS. As an example, we were given a hypothetical of a telephone call reporting an envelope found containing an unidentified white powder. The investigation of such a matter may be completed before any file is formally opened. In such cases, pre-approvals for the investigation are not obtained from NSOB but NSOB is notified contemporaneously with the investigation.

Information received by INSET from the public, and information obtained by INSET officers in the course of their investigation about matters not related to their files, is also screened through the IO before further action is taken by INSET. In addition, we are informed that the IO reviews reports such as the Canadian Police Information Centre printouts of virtually all crimes reported to see if any may have a national security nexus.[12]

The IO also monitors investigations in other areas[13] to see if there is a national security nexus. We are advised that, if there is a deemed national security link, INSET becomes involved.

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[12] We are informed by the O-INSET IO that he pays special attention to crimes such as the theft of explosives and may do further investigation to determine whether there is a national security nexus.

[13] For example in the Organized Crime section.

Whether the file is moved to INSET, or INSET officers work with the originating department, will depend on the nature of the national security link. We are informed, however, that in all such cases full reporting on the file would take place through INSET to NSOB and that all national security polices and procedures will apply.

The work of O-INSET is roughly divided into 'day-to-day investigations' and 'long-term projects'. The day-to-day investigations can be further divided into short-term investigations and mini-crises. In the former category, the matter will usually be handled by a member of O-INSET's Quick Response Team. For mini-crises and in exigent circumstances, decisions may need to be made on the spot, and we are informed that there may not always be time for "formal" approval from RCMP Headquarters before work begins. Nonetheless, in such circumstances, both Headquarters and Division Criminal Operations Branch are notified immediately of any action taken. In addition, both are kept apprised of developments and we are informed that subsequent reviews and approvals are sought as soon as possible.

Longer term projects involve a more formalized approval process. Such projects begin with strategic analysis of criminal intelligence. The analyses focus on emerging trends such as what groups or entities appear to be involved in national security or criminal behaviour. These strategic analyses are sent to RCMP Headquarters as part of the priority-setting process. The strategic priorities are set by Headquarters in Ottawa in the spring of each year. Work continues on strategic priorities until such time that the investigation stops or the matter becomes a tactical priority. Tactical priorities are set in the fall of each year. When a matter becomes a tactical priority, the object of the investigation becomes disruption of the criminal activities and/or the laying of criminal charges. Both strategic and tactical priorities are ultimately determined by the Division Criminal Operations Branch[14]. We are informed that Division Criminal Operations Branch is the first line of reporting and approval before undertaking a major investigation. The Division Criminal Operations Branch reviews the investigative plan to

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[14] This process is much the same as that undertaken by NSOB in Ottawa in the preparation of TAPs. The work undertaken by NSIB also feeds into the setting of tactical priorities by ensuring that the Divisional Criminal Operations Branch is apprised of all the information in order to set the tactical priorities. Once the tactical priorities are set than the development of TAPs are based on these tactical priorities. The gathering of information and development of intelligence will be directly in line with both the strategic priorities and tactical priorities. For example, if Individual "A" is being designated a tactical priority, he or she will be a primary focus of a TAP if it is required. It should be noted that not all Tactical Priorities will require TAPs as some may be under active investigation when designated as a Tactical Priority.

ensure it complies with policy and procedure, then forwards the plan with its support and approval to NSOB where it is subjected to a further review with the ultimate authority being the Assistant Commissioner in charge of CID.

Both strategic and tactical priorities involve investigation and the collection of information. While prosecution of criminals is a goal, not all information collected meets the criteria of evidence. Regardless, all such information remains in SCIS until detected in the ordinary course.

While not the usual course, O-INSET has conducted a single joint investigation with the FBI. In addition, there have been occasions where the FBI or other law enforcement partners have conducted criminal investigations involving subjects that the RCMP is also investigating. We are informed that in those cases, information was shared and the two agencies cooperated. On one occasion FBI personnel attended in Toronto as observers in an investigation due to the alleged threat to American interests. We are informed that in all cases, these investigations were centrally coordinated.

O-INSET also has its own Source Development Unit. The Source Development Unit is tasked by members of INSET, who identify the need for a human source. Once the source has been developed by the Source Development Unit, he/she is handed over to the investigating officers who require the source. As noted in the RCMP Paper, the Headquarters' role in source development is one of oversight and development of source development policies.

We are informed that all information obtained by officers transferred to the INSET from other agencies, is not to go back to that other agency except through normal national security channels.

O-INSET also includes a Special Operations Center (SOC). This is a technologically advanced room with video screens on the walls and five or six rows with numerous computer stations at each row. The SOC is available for monitoring/coordinating major events such as the El Al incident referred to above, or the visit to Toronto of a foreign dignitary. The computer stations available at each row in the SOC are for each of the INSET partners. These stations provide access to their respective home networks. None of the terminals has SCIS access. There are three O-INSET offices in the SOC with access to SCIS. One of these offices also has links to

Canadian Embassies and High Commissions abroad. While foreign agencies do not have stations within SOC, they can be electronically connected into the SOC as necessary.

IBET

IBETs were identified in the RCMP Paper as having a significant role in the RCMP's national security mandate. On the basis of our visit to the Windsor IBET, it appears at the present time that IBETs do not have a significant national security role. While IBETs feature prominently in the Manley-Ridge Accord, and while national security is a clear part of their mandate, their focus, at the present time, is more on the illegal movement of goods and individuals across the Canada-US border. The focus of the IBETs is on border enforcement between official ports of entry.[15]

IBETs currently play a support role in the RCMP's national security activities in conjunction with INSETs. Currently, the IBET operates as a type of eyes and ears for INSETs at the border. Any information which an IBET identifies as related to national security is passed to an INSET. In addition, members of an IBET are available to be tasked by an INSET. In the case of the Windsor IBET and O-INSET, such tasking has occurred from time to time. O-INSET has taken the lead on such matters, and we are informed that all national security policies and procedures have applied.

IBET is made up of the following core partners: the RCMP, CBSA, U.S. Immigration and Customs Enforcement, U.S. Coast Guard and U.S. Customs and Border Protection. The Windsor IBET also has one OPP secondment. In addition, O-INSET has two personnel who are co-located with the Windsor IBET. The core partners are not integrated as a team in the same way that INSETs are. For example, we are advised that partner personnel will not go out on an investigation with RCMP officers. Each partner has his/her own office and works independently of the others. The primary purpose of the co-location is to facilitate information sharing.

One of the O-INSET officers co-located at the IBET reviews IBET activity reports to see if anything of interest from a national security perspective arises. This information is reported

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[15] The CBSA is responsible for border enforcement *at* the ports of entry.

back to O-INSET.[16] We are advised that access to SCIS or other national security information is through INSET only.

In addition to an operations or investigatory side, IBET also has an intelligence section. IBET is involved in the creation of two intelligence products: a monthly IBET Division Report; and an Annual Canada-U.S. Between-Ports Risk Assessment (BPRA). The monthly Division Report takes raw information obtained by IBET and processes it into intelligence. Its purpose is to establish patterns of criminal activity and to prioritize those individuals and organizations involved in criminal activities that would be of serious consequence in the community. The focus of the Report is on the illegal movement of goods and people. We are informed that the Report contains protected information but does not contain any national security or top secret information. The monthly Divisional Report is primarily prepared for IBET use but we are informed that it is funnelled through RCMP divisional intelligence into a divisional monthly intelligence report.

The BPRA is compiled through IBET's core partners and other law enforcement agencies. It profiles criminal activity in terms of geography, demographics, infrastructure, roots and the criminal organizations involved. Again we are informed that the primary purpose of the BPRA is the identification of risks associated with the illegal movement of goods and people across the border. We note, however, that our review of a BPRA disclosed that it included national security information, including information about suspects and possible links to terrorist groups. We were told that this information was supplied by INSET, but was not considered to be top secret. The BPRA is distributed to the IBET's core partners in Canada and the U.S.[17] IBET partners meet regularly to exchange information. We are told that no national security information is shared at these meetings.

IIET

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[16] It was noted that there are different definitions of national security. For example, some on the U.S. side consider all illegal aliens to be threats to national security. This definition results in a much greater national security role for IBET.

[17] We are informed that in addition to the core partners, the 2004 BPRA was sent to the following agencies: United States Department of Justice; Michigan State Police; Canadian Pacific Police; Ontario Provincial Police; and the Walpole Island Police Chief.

The Commission also visited the Toronto IIET. The Toronto IIET was co-located with the RCMP's Immigration Task Force (ITF). The majority of work done by the IIET was immigration warrant apprehension. This work was driven by CBSA which passed files on to both the IIET and the ITF. In the context of this work, IIET supported INSET by passing on to INSET any relevant information found in the CBSA files or in the course of the warrant apprehension work. INSET officers were free to take over any investigation that had a deemed national security nexus. It was also possible for IIET to continue working on such files under the supervision of the INSET.

In regard to the warrant apprehension cases, IIET received a CBSA file with a significant amount of information on the individual involved. The file was reviewed and all national security information was provided to INSET. We are informed that IIET officers did not have access to SCIS or any other national security information in connection with the warrant apprehension cases.

It was envisioned that IIET would eventually have its own national security projects,[18] but to date this has not happened. It was also open for INSET to task IIET in a national security investigation. This has happened, but only rarely.

We are recently informed that as of April 1, 2005, the RCMP redeployed the IIET resources to the INSETs. As a result, IIETs no longer exist. We are informed that ITF, which consists of RCMP and CBSA personnel, continues to focus on immigration warrant apprehensions and supports INSET as required.

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[18] Projects related to passport fraud schemes were cited as a possible example.

SCHEDULE A

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SCHEDULE B

ACRONYMS

ACRONYM	DEFINITION
BPRA	Between-Ports Risk Assessment
CBSA	Canada Border Services Agency (Canada)
CFSEU	Combined Forces Special Enforcement Unit
CIC	Citizenship and Immigration Canada
CID	Criminal Intelligence Directorate
CrOps	Criminal Operations Officers
CSE	Communications Security Establishment (Canada)
CSIS	Canadian Security Intelligence Service (Canada)
DND	Department of National Defence (Canada)
DOJ	Department of Justice (Canada)
FAC	Foreign Affairs Canada
FBI	Federal Bureau of Investigation (U.S.)
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
IBET	Integrated Border Enforcement Team
IIET	Integrated Immigration Enforcement Team
INSET	Integrated National Security Enforcement Team (Canada)
IO	Intake Officer
ITF	Immigration Task Force
NCO	Non Commissioned Officer
NSIB	National Security Investigations Branch
NSIS	National Security Investigation Section
NSOB	National Security Operations Branch
O-INSET	INSET located in Toronto

OIC	Officer in Charge
OPP	Ontario Provincial Police (Canada)
PATS	Provincial Anti-Terrorism Section (Ontario)
RCMP	Royal Canadian Mounted Police (Canada)
SCIS	Secure Criminal Information System
SOC	Special Operations Center
TAP	Tactical Analytical Product